IN THE SUPREME COURT OF NEVADA

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC, Appellants, vs. DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, Respondents,	Supreme Court Case No. 86676 Dist. Ct. Case No. A-18-767242-C Consolidated with A-16-738444-C

EDGEWORTH APPELLANTS' OPENING BRIEF (CORRECTED)**

Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
MORRIS LAW GROUP
801 South Rancho Dr., Ste. B4
Las Vegas, NV 89106
Phone: 702-474-9400
Fax: 702-474-9422
sm@morrislawgroup.com
rsr@morrislawgroup.com

**Includes minor clerical corrections, including to notes 9, 15, 20, and 22.

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) that must be disclosed. These representations are made to enable the Justices of this Court to evaluate possible disqualification or recusal.

The 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 Appellants were represented in the district court by the law firm of Vannah & Vannah, Messner Reeves LLP and Morris Law Group. These Appellants are represented in this appeal by Steve Morris, Rosa Solis-Rainey of Morris Law Group.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
Steve Morris, Bar No. 1530
Rosa Solis-Rainey, Bar No 7921
801 S. Rancho Dr., Ste. B4
Las Vegas, NV 89106

Attorneys for Edgeworth Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

TREATISES

I. JURISDICTIONAL STATEMENT

Appellants timely appealed from the district court's March 28, 2023 Fifth Amended Decision and Order on Motion to Adjudicate Lien, that again refused to comply with the mandate of this Court expressed in its Order of September 16, 2022. AA1307 (Remittitur was filed on December 15, 2022 (AA1348).[1] Notice of entry of the order was filed on April 24, 2023. AA1749.

Appellants' notice of appeal was timely filed on May 24, 2023, (AA1782) pursuant to the direct appeal provisions of Nev. R. App. P. 3A(b)(1). Therefore, this Court has appellate jurisdiction over all issues presented in this appeal.

II. ROUTING STATEMENT

The Nevada Supreme Court has jurisdiction over this appeal pursuant to Nev. R. App. P. 17(a)(12). The appeal arises out of the district court's failure on remand, twice, to adhere to this Court's mandates in

---

[1] On September 27, 2022, again before this Court returned jurisdiction to the district court, it entered the Fourth Amended Decision and Order on Motion to Adjudicate Lien. AA1318-43; *see Buffington v. State,* 110 Nev. 124, 126, 868 P.2d 643, 644 (1994); Nev. Rev. Stat. 177.155; Nev. Rev. Stat. 177.305. Notice of entry of that premature order was not given. Once remittitur issued, briefing ensued and the Fifth Amended Decision and Order on Motion to Adjudicate Lien that is the subject of this appeal issued, and was challenged by writ, which has been fully briefed but has not been decided (Case No. 86467). Thus, the Edgeworths have proceeded with this timely-filed appeal.

Cases Nos. 77678 and 83258/83260. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (Table) (unpublished) (Nev. 2020); *Edgeworth Family Trust v. Simon* (*EFT II),* 516 P.3d 676 (Nev. 2022) (Table).

III. ISSUE PRESENTED

A. 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 v. Golden Gate Nat. Bank,* 85 Nev. 345, 455 P.2d 31 (1969), that would justify a quantum meruit award to Simon of $200,000 for 71.10 hours of ***post-discharge*** administrative services?[2]

IV. STATEMENT OF THE CASE

Daniel Simon represented the Edgeworth Appellants in a property damage case in 2016 and 2017 (referred to herein as "Viking" action) until "the Edgeworths constructively discharged him on November 29, 2017." AA0412. Before the constructive discharge, Simon had retained counsel and considered the Edgeworths adversaries, but he did not disclose the conflict to the Edgeworths immediately or, when post-discharge, he continued to work for a brief time. Prior to his discharge, Simon had billed the Edgeworths at the rate of $550 per hour in four invoices from inception

[2] This was the second issue raised in the pending Writ Petition in Case No. 86467. Relief was sought by way of a writ petition because of the repeat nature of the district court's error, which the Edgeworths believed warranted extraordinary relief, as set forth in the first issue in their writ petition.

of his representation to September 29, 2017, for a total of $367,606, which they paid along with almost $115,000 in invoiced costs. AA0052.

The terms to settle the Viking case were agreed to on November 15, 2017, and the same day, the Edgeworths again asked Simon to provide any unpaid invoices for his services and costs. *See* AA0005:22-25; AA1717; AA0052-53 (¶¶13, 14);. Rather than do that, he summoned the Edgeworths to his office to discuss a retainer agreement he had just prepared to give himself $1.5 million beyond what they had already paid him for his services. AA0053. Also on the same day, Simon retained counsel to represent him against the Edgeworths, without informing them of the conflict. AA0152. The Edgeworths rejected Simon's written demand and retained the firm of Vannah & Vannah on November 29, 2017, to represent them. AA0053 (¶17). Simon then filed an attorney lien. *Id.* at ¶20.

The district court adjudicated Simon's lien in 2018 and awarded him approximately $285,000 for services rendered from September 19 to November 29, 2017, at his implied-contract rate of $550 per hour and $275 per hour for his associates. AA0065. The district court also awarded Simon $200,000 in quantum meruit for service he rendered for a short time after his discharge on November 29, 2017. AA0069. An appeal by the Edgeworths followed.

On December 30, 2020, this Court decided the appeal and "vacat[ed] the district court's grant of $200,000 in quantum meruit for post-discharge work and remand[ed] for the district court to make findings

regarding the basis of its award." *Edgeworth Family Trust*, 477 P. 3d 1129 at *2 (2020). The Court said "it is unclear whether the $200,000 [in quantum meruit] is a reasonable amount to award for the work done after the constructive discharge." *Id.* The Court pointed out that the disputed award was based on findings "referencing work performed before the constructive discharge, for which Simon had already been compensated under the terms of the implied contract, [and] cannot form the basis of quantum meruit award." *Id.*

In her post-remand order of April 19, 2021 (reconsideration denied on June 18, 2021), the district court merely reiterated the findings that supported the award for services Simon performed ***before*** he was constructively discharged as the basis for the $200,000 quantum meruit award for his ***post***-discharge work. AA0644-48.

The Edgeworths again appealed and on September 16, 2022, this Court again vacated and remanded with clear instructions that the district court again did not follow. *EFT II*, 516 P.3d 676; AA1313-16. The district court again did "not make any other findings of fact regarding work Simon completed ***post-discharge***" to justify the windfall awarded. She also ignored that some of the work Simon invoiced was for his own benefit or directly contrary to his client's instructions (i.e. removal of the confidentiality clause), as well as Simon's misrepresentations to his clients and his undisclosed conflict of interest. This third appeal followed.

V. STATEMENT OF FACTS

The Court has had the facts of this case before it in two separate appeals (Case Nos. 77678 and 83258/83260), 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), ***and*** in the Edgeworths' pending writ petition (Case No. 86467). The relevant facts for this third appeal are therefore only very briefly set forth here.

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. AA0409-10. Simon billed the Edgeworths $368,588.70 for his time and $114,864.39 in costs.[3] AA0655. Simon failed to memorialize the terms of his representation in writing, AA0410, 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 case on

[3] 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 (AA1738:22), the Edgeworths **have already paid** Simon a total of **$837,280.52.**

November 15, 2017, and while he said settlement was being memorialized, Simon demanded a change in the terms of his compensation. AA0720-25.

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. AA0673-76; AA0791. 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* AA1613 (Simon's 4:58 p.m. email suggesting the settlement draft was not started before November 27th "due to the holidays") *with* AA1558 (showing that Simon had been sent at least one draft of the settlement agreement by 4:48 p.m. on the 27th).[4] 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, which confirmed his earlier threat that unless they accepted his new

[4] In prior proceedings, including before this Court, Simon denied the existence of other settlement drafts, claiming all negotiations were in-person. AA0016:18-24; AA1553; *but see* AA1385 n. 5 and AA1556-82. 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.

fee demand, the settlement would be jeopardized. AA0721-28. He told the Edgeworths that if they did not accept his post-settlement demand, "I cannot continue to lose money to help you." AA0725. On the same day as this demand, Simon retained counsel to represent him against the Edgeworths, but neglected to notify them that he now considered them adversaries. AA0152. The Edgeworths rejected his written demand and retained Vannah & Vannah on November 29, 2017 to protect their interests. AA0687.

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. AA0689-96. 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. AA697-705; *compare* date he says he negotiated the agreement at AA0698 *with* his testimony at AA0718. The Edgeworths signed the Viking settlement on December 1, 2017. AA0052:22-24; and AA0058:2-4. 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 Simon 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 (AA0070), which ***includes*** the $200,000 at issue here, ***not*** the $2.4+ million claimed by Simon in his lien.[5] 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.[6] *Compare*

---

[5] The net lien amount claimed was $1,977,843.80 million after deducting the $367,606.25 in fees already paid. AA0781-82. The Edgeworths had also paid $118,846.84 in costs, AA0052:16, increasing the total claimed by Simon to $2,464,296.89 (over 40% of the Viking settlement).

[6] 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. AA0823 (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"); AA0824 (falsely reporting to another district court that "Judge Jones ordered the funds remain in the account after Edgeworths appealed to the Supreme Court."); AA0827 (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

AA0781-82 *with* AA0070. Of the $484,982.50 award, $284,982.50 was for *unbilled* pre-discharge work between September 19 and November 29, 2017, which Simon described in his "superbill" and the district court fully accepted without reservation.[7] 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

---

27, 2023, Simon finally relented and "agreed" to release the over $1.5M that he had withheld from the Edgeworths since 2017.

[7] 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*. AA0063. 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). AA0064:15-23.

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 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.[8]

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 Amended Order to implement the Court's mandate by explaining the basis for the quantum meruit award and its

[8] 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.

reasonableness without leaning on Simon's 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 was credited at his implied contract rate, the reasonable value of those 71.10 hours of mostly administrative work ***did not exceed*** $34,000. *See* AA1355-63 (Simon's 2023 briefs reiterating the billing set out in his 2018 "superbill"). The district court ignored that fact. *See* AA0743-47; AA0748-51; AA0753-57.

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.[9] AA0757; *see also* AA0743-47; AA0748-51. 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. AA0757.[10] The

[9] In the 2023 briefing, Simon himself presented the 71.10 hours as support for his quantum meruit award, as discussed *infra* at pp. 28-31.

[10] The key here is Simon's misrepresentations, which the district court would not even consider. Hard evidence of the extent Simon's misrepresentations recently began to emerge but only after this Court ordered him to produce the Edgeworths' file in 2022 which prior to that time he had refused to do, as

$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***,[11] 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. AA0743-47; AA0748-51; AA0753-57. His post-discharge work can be fairly summarized as follows:

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 AA0757.

---

we specifically point out elsewhere in this brief. For this reason, it would be grossly **unfair to the Edgeworths** to compensate Simon at any rate for being untruthful with them and the district court (Judge Crockett, for example) when Simon represented that Judge Jones had "ordered" him to withhold settlement money that belonged to the Edgeworths to keep it "safe" while his lien case was pending. AA0827.

[11] $200,000 / 71.10 = $2,812.94.

Over seven hours to open a single two-signature bank account at a local bank is not reasonable (AA0755 green entries); nor is charging a client ***nearly five hours*** for preparing a short perfunctory attorney's lien ***for Simon's benefit***. AA0753-57 (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 his discharge. *See* AA0698; AA0718 (testimony that he was done "hammering out" terms by 11/27). The district court's findings confirm the dates. AA0050-54.

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 September 16, 2022 order of reversal and remand issued, 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 order 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 7, *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. AA0064:15-AA0065:4. The district court merely found the superbill unreliable to ***amend*** earlier periods that Simon ***had already invoiced*** and the Edgeworths had paid. AA0062:11-AA0063:19.

D. THE SECOND POST-MANDATE PROCEEDINGS THAT OCCASION THIS APPEAL 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.[12] 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. AA1745; see also AA1738 (confirming no costs are owed); *see* AA0108, AA0649, AA1341 (same error in Second, Third, and Fourth Amended Orders); AA0667 (the Edgeworths' 2021 effort to correct this error).

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. AA1356-63. Simon's motion also incorrectly included work performed on November 29, 2017, for which he had been compensated under the implied contract. AA1355-56 (including hours for 11/29/17); AA0064 (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 he supports, in part, by pointing to documents ***he had but withheld*** from the Edgeworths notwithstanding this Court's ***and*** the district court's orders that

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

he produce 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 instructed him to accept. AA1367. Simon's testimony that he negotiated the removal of the confidentiality clause at their request was false. AA1506-07 (testimony); AA1619 (evidence the Edgeworths told Simon they had no problem with a confidentiality provision); AA0698 (admitting he unilaterally removed the confidentiality 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. AA0666; AA0753-57. 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.[13] The district court's latest order does not address how that

[13] 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. AA0052-53, ¶14; AA1617. The costs he claimed

ministerial work was considered. The court merely says Simon was an exceptional advocate and his ***pre-discharge*** work was complex. AA1740-44.

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***. AA1740-44; *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 discredited analysis in its 2018 Order, which also focused on Simon's pre-discharge work. AA1740-44. Its analysis of the "Quality of the Advocate" and "Results Obtained" prongs are identical, and the "Character

---

fluctuated without support: in his 11/30/17 lien, he claimed he was owed $80,326.86 in costs (AA0776); seven days later, he claimed costs owed were approximately $200,000 (AA1617); three weeks later, his amended lien claimed costs of $76,535.93 (AA0782). The costs he ultimately collected were $68,844.93, AA1738:22, although it was later discovered his backup included costs for a different client; it took him eight months to refund the overpayment.

of the Work" and "Work Actually Performed" prongs were only slightly but not substantively reworked. *Id.* With respect to the increase in the Lange settlement, the amounts set out by the district court are – perhaps unintentionally – misleading. The increase in the Lange Plumbing settlement from $25K to $100K added a $22K setoff, thus increasing the settlement value by $53K not $75K. AA1584. 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 largely to support a good-faith determination of the Lange settlement to resolve claims between Lange and Viking. AA1366. This was not a "complex" matter. *See* AA0753-57. 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. AA1741. 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.[14] Providing false or misleading information to a client and the court is 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.[15]

---

[14] *E.g.,* Simon falsely testified he negotiated the confidentiality clause at Mr. Edgeworth's request. *See* AA1506-07 (testimony); *see* AA1619 (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* AA1515:18-24; AA1553; *see also* AA1385 n. 5 and AA1556-82; *compare* AA1540 (in briefing before this Court mocking the suggestion that he had executed agreements); *with* AA1586 (email Simon produced on 12/6/2022 confirming the executed drafts were routed through Simon as he had demanded on November 30, 2017 (AA1583-84); AA1715 (***Simon's recent admission that he destroyed the fully executed agreements***).

[15] This sordid history does not support awarding Simon $200,000 in quantum meruit for his post-discharge work. *See* n.10, *supra*.

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* AA1740-43 (latest *Brunzell* analysis) *with* AA0645-48 (*Brunzell* analysis in Third Amended Order vacated in 2022).

This third appeal challenges the district court's failure to follow the Court's 2022 mandate and, particularly, its consideration of Simon's fully compensated pre-discharge services in determining the reasonable value of his very limited post-discharge services.

VI. SUMMARY OF ARGUMENT

District Judge Tierra Jones again erred in refusing to follow this Court's mandate to explain the reasonableness under *Brunzell* of the $200,000 quantum meruit award to Simon for post-discharge services he provided to the Edgeworths. The district court's *Brunzell* analysis following two remands steadfastly focused on Simon's pre-discharge work – in fact, the district court's analysis in 2022 is substantively the same as the district court's analysis in 2018 that this Court rejected. AA1772-77 (2022 analysis); AA0602-06 (2018 analysis). In her post-remand order of April 19,

2021 (following the first appeal), the district court tacked on one paragraph to her rejected order, apparently in an attempt to respond to the Court's mandate regarding the reasonableness of the quantum meruit award under *Brunzell.* AA0585. She did essentially the same thing following the second appeal. (Cite) However, the explanation in both post-appeal orders is based on a ***pre***-discharge analysis. Thus the record before the court confirms that the $200,000 awarded for ***post***-discharge services is *not* reasonable under *Brunzell.*

VII. STANDARD OF REVIEW

This Court has previously and unequivocally held that "[w]hether the district court has complied with our mandate on remand is a question of law that we review de novo." *State Eng'r v. Eureka County*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017) (*citing Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 263, 71 P.3d 1258, 1260 (2003)). This Court's decision in the prior appeal that pre-termination services could not, under *Brunzell*, support the district court's quantum meruit award for post-termination services is now the law of the case, which the district court did not follow on remand. *Id.* (*citing LoBue v. State ex rel. Dep't of Highways*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976)). Because the district court again clearly erred in entering an order that does not comply with this Court's mandate, the order should be reversed. *Id.*

VIII. ARGUMENT

A. THE COURT'S PRIOR MANDATES WERE PERFECTLY CLEAR YET THE DISTRICT COURT DID NOT FOLLOW THEM.

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. Despite two clear and unambiguous mandates, the district court insists on providing Simon a windfall without explanation as to its reasonableness, likely because the record evidence in this case makes a windfall patently unreasonable.

1. *The District Court Did Not Follow This Court's Mandate After the First Appeal Despite it Being Specific and Unambigious.*

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.*

Although the district court was bound to follow the Court's order after the first appeal, it did not do so. *LoBue*, 92 Nev. at 532, 554 P.2d at 260. In 2021 following the first 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, (AA0627-49), 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. AA0649. That order was identical to the one that the Court rejected in the first appeal. AA0066-69; AA0649. The Third Amended Order was still 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). Thus, the Edgeworths again appealed the district court's second faulty quantum meruit decision. AA1313-17 (Case No. 83258-83260).

2. *Following the Second Appeal, the Court Reiterated its Unambiguous Mandate.*

In its September 16, 2022 Order, the Court ***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. at 559, 402 P.3d at 1251). 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.*

Addressing the district court's Third Amended Order, the Court in 2022 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***.

EFT II, 516 P.3d 676 at *1 (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).

As it did after the first appeal, the district court again jumped the gun to reiterate her prior orders and entered the Fourth Amended before

jurisdiction was returned by remittitur. AA1318-43. 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* AA1340 *with* AA0644-48.

For the most part, there was no substantive difference in the way the two orders justify the quantum meruit award to 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[16] 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

[16] Simon's own briefing confirms the 71.10 hours the Edgeworths previously detailed and submitted should be the basis for the quantum meruit award. AA1356-63. The delays due to the district court's repeated failure to follow this Court's mandate should not enable Simon to now, *nearly five years later*, add to the "superbill" he chose to present to the district court in 2018, especially when the work is allegedly supported by ***records he knowingly withheld*** from the Edgeworths during the years he refused to turn over their client file.

discharged on November 29. AA0718 (settlement terms were "hammered out . . . ***before*** he was fired"); AA0716-17 (placing the date of the negotiations at November 27, 2017, emphasis added). The Lange settlement was also fully negotiated and the Edgeworths instructed Simon to accept it the morning of November 30, 2017 (AA0698), although Simon ignored that express instruction and claims he continued to negotiate better terms later that day.[17] AA0698 (last paragraph); AA0054 ¶23.

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 order, however, complies with the Court's mandate to make specific and express findings as to what Simon did ***post-discharge*** 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 explain the reasonableness under *Brunzell* of the windfall to Simon that the district court insists on bestowing. *See Las Vegas Review-*

---

[17] 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. AA1388.

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)).

B. THE DISTRICT COURT'S LATEST ORDER GIVES LIP SERVICE TO THE MANDATE BUT STILL DOES NOT ADHERE TO IT.

1. *Simon's Quantum Meruit Compensation Award Should be Limited to the Billing He Chose to Present to the District Court in 2018.*

Following the latest remittitur, the district court abandoned its Fourth Amended Order to consider Simon's motion to "adjudicate" the quantum meruit issue in accord with the Court's 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.[18] His efforts ignored the fact ***he presented***

[18] 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

testimony in 2018 that the superbill was meticulously prepared after review of the entire file, including email. AA1378 and AA1424:16-17.

Not only is it inappropriate to allow Simon to capitalize on the delays caused by the district court's repeated errors to try to beef up his "super bill" nearly five years after-the-fact, but he should be held to his tactical choices in 2018 when he represented to the court that his "superbill" had been painstakingly prepared. If Simon chose to omit "services" for that period, especially when those services were not for the benefit of the Edgeworths, he should be held to that 2018 tactical decision. The improper add-ons Simon claims based on newly produced portions of the Edgeworths' file he has wrongfully withheld for years following creation of his "superbill"

---

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 – morean 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.

in 2018 in fact did not benefit the Edgeworths, and some of the add-ons were for dates ***before*** his superbill was submitted.[19] *See* AA1378-87.

It bears emphasizing that some of the "add-ons" that Simon sponsored are email exchanges ***he deliberately withheld.*** They were not part of the file he previously turned-over.[20] The add-ons ***directly contradict*** his

---

[19] The district court order mistakenly accepted Simon's argument that he is owed for services for November 29, 2017. AA1739:11 – 13; Ans. at 17). As the district court's 2018 order made clear, the court compensated Simon under the implied contract, accepting the outrageous number of hours listed on his superbill for the unbilled period between September 19, 2017 to ***and including*** November 29, 2017. AA0064:15-23.

[20] 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. AA0819; *see also* AA1385:11-AA1386:9. 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 that 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. AA1385. 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. AA1603-04. This untimely-produced email confirmed his misrepresentation regarding settlement drafts. *See* n.4 *supra; see also* Sec. VII(B)(1) at pp. 28-31, *infra*.

suggestions to the Edgeworths, the district court, and this Court that drafts of the settlement agreements did not exist because the agreement was entirely negotiated in person. AA1515:18-24; AA1553; *but see* AA1385 n. 5 and AA1556-82; *compare also* AA1540 (in briefing before this Court mocking suggestion that he had executed agreements) *with* AA1586 (email Simon produced on 12/6/2022 confirming the executed drafts were routed through Simon as he had demanded on November 30, 2017 (AA1583-84); AA1584 (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 Plumbing settlement to resolve claims between Lange and Viking (not between the Edgeworths and these parties). *See e.g.*, AA1366:2-17.

In addition, the add-ons are for ministerial work, not substantive "complicated" work as Simon and the district court have suggested. Though it is fundamentally unfair to allow the add-ons, even if the added work were considered, the fee awarded by the district court remains unreasonable.

2. *The Sparse and Irrelevant Factual Findings Added to the Order Listing Filings Since the District Court's Initial Failure to Follow the Mandate.*

The district court's current Fifth Amended Decision and Order on [Simon's] Motion to Adjudicate Lien (AA1718-48) largely tracks the district court's prior four orders (the second and fourth of which were entered without jurisdiction). Although the district court added 41 paragraphs, 40 of them merely list the date and title of filings, including this Court's orders. (AA1724-27 ¶¶ 34–74). The last of these "added" 41 paragraphs (AA1727 ¶ 75) is merely a conclusory statement that "the [district c}ourt finds that there was ample foundation for the quantum meruit award of $200,000.00." These added paragraphs are not "specific and express findings" as to Simon's post-discharge work.

The Fifth Amended Order, like its four predecessors, does not honor this Court's two express mandates "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." *EFT II*, 516 P.3d 676 at *1 (emphasis added). The body of this latest order merely discusses work that is included in the 71.10 hours of ministerial work that the Edgeworths have urged the Court to consider. That ministerial work

includes opening a bank account for settlement checks he refused to release to the Edgeworths and finalizing the Lange Plumbing settlement, both of which he had already included among the 71.10 he claimed in his superbill (21.55 hours to finalize the Lange settlement; and 7.25 hours to open the bank accounts). AA0757. This ministerial work is not worth over $2,800+ per hour that the district court insists on gifting to Simon.[21]

Rather than setting out the specific post-discharge work of Simon that it considered, as this Court instructed it to do, the district court merely shuffled a few non-substantive words in its *Brunzell* analysis section which largely repeated the same analysis previously rejected by this Court. AA1740-43. The district court's order, in fact, even carried over the same error from 2018 about costs the Edgeworths promptly paid which the court continues to include in each of its cut-and-paste orders that do not comply with the Court's mandates.[22] *Compare* AA1745 (including $71,894.93 in

[21] $200,000 / 71.10 = $2,812.94.

[22] The $71,894.93 amount of the costs listed in the judgment section has also been incorrect in each of the five orders. *See* n.13, *supra.* Costs were immediately paid when Simon finally disclosed them as being $68,844.93 (*see* AA1738:22), although this amount was later found to be overstated.

judgment)[23] *with* AA1738:23 (acknowledging no costs remain outstanding); AA1745; *see* AA0108, AA0649, AA1341 (same error in Second, Third, and Fourth Amended Orders); AA0667 (the Edgeworths' 2021 effort to correct this error).

For instance, in the "Character of the Work" section, the district court ***omitted*** details about how the character of the pre-discharge work was complicated, presumably to satisfy the mandate, but the words the court substituted **do not** show that the post-discharge work was complicated. Ans. at 19. It was routine at most, as a reading of Simon's billing descriptions attests.

In the 2021 third iteration of its order, the district court described the quality of the pre-discharge work for which Simon has been compensated as follows:

> The character of the work done in this case is complex. There were multiple parties, multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the gamut from product liability to negligence. The many issues involved manufacturing, engineering, fraud, and a full understanding of how to work up and present the liability and

---

[23] This error has been addressed in briefing to the district court more than once and yet has gone uncorrected. *See e.g.*, Case No. 84159, Vol. I Appx, P000157;' Case No. 83258-83260, Vol. IV Appx. AA0804-05.

> damages. Mr. Kemp testified that the quality and quantity of the work was exceptional for a products liability case against a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a substantial factor in achieving the exceptional results.

AA0645.

The new paragraph in the 2023 fifth iteration of the Order states:

> 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.

AA1741. Thus, although the district court said in its Fifth Order that "complications in the case continued," that statement is unsupported and the work described by Simon himself in his superbill contradicts that conclusory statement. In describing the work Simon actually performed, the district court again remained focused on ***pre-discharge*** work that Mr. Edgeworth assisted with that led to the large settlement with Viking, which Simon

himself testified was fully "hammered out . . . ***before*** he was fired." AA0718; *see* AA0716-17 (placing the date of the negotiations at November 27, 2017). That settlement was fully ***negotiated pre-discharge*** and Edgeworths approved the settlement agreement Simon had been holding hostage and shared for the first time on the morning of November 30, and signed it on December 1, 2017. AA0698; AA0052 at ¶ 13.

Likewise, the district court merely restated the "Work Actually Performed" pre-termination paragraph but added nothing of substance pertaining to post-termination work. It said:

> 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.

AA1741; *see also* AA0645-46 (for old description). The four-times over "increase" in the Lange settlement that the court gives Simon credit for refers to the additional $75,000 that resulted in a net increase of $53K to the Edgeworths due to the set-off that was part of the negotiation. AA1388.

Additionally, Simon's contention that he negotiated this $53K increase on November 30, 2017 is contradicted by his own testimony that all settlement negotiations were "hammered out" pre-discharge. AA0718; Case No. 86467 Supp. Appx. at P00835 (confirming Simon was actively discussing settlement agreement on 11/27/17); *id.* at P00836 (confirming terms were agreed upon by November 28, 2017). His November 30 email which contends that the Lange settlement increase and Simon's unilateral removal of the confidentiality clause were accomplished on November 30 also contradicts his own testimony on the subject. AA1584.

Crediting Simon for these changes also ignores the fact that he unilaterally usurped the Edgeworths' right to decide settlement matters when he ignored their instruction to accept the confidentiality clause and Lange settlement as it was. AA0698. Furthermore, Simon cost the Edgeworths upwards of $41K in additional interest he knew was accruing on the loans they took to pay his prior fees (AA0052 at ¶11) by refusing to promptly accept and turn over their settlement checks when they were offered on December 12, 2017, and holding hostage the checks or proceeds from cashing them until January 22, 2018 when he released the portion of their settlement monies he unilaterally decided was "undisputed"

In part at Simon's urging (AA1367; AA1390:1-7), 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.* Any doubt about the district court's reliance on the pre-discharge work in its Fifth Order is eliminated when reviewing the "Result Obtained" section of the Order, which remained ***identical*** to the ***four*** prior orders. The district court said:

> The result was impressive. This began as a $500,000 insurance claim and ended up settling for over $6,000,000. Mr. Simon was also able to recover an additional $100,000 from Lange Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle the Lange Claim for $25,000 but Simon kept working on the case and making changes to the settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible. Mr. Kemp also testified that he has never heard of a $6 million settlement with a $500,000 damage case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's [sic] acknowledge that they were made more than whole with the settlement with the Viking entities.

AA1741-42; AA0646 (***for identical analysis*** in third order).

The district court failed to consider or comment on the ministerial nature of Simon's post-discharge work. *See* AA1399-1403. The nature of that work was described by Simon in his 2018 superbill (AA1405-

19), as outlined in both the Edgeworths and Simon's briefing. AA1399-1403; AA1356-63. 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* Rest. (Third) of the Law Governing Lawyers § 39 cmt. b(ii) (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.)

C. THE RECORD SUPPORTS MANDAMUS AND/OR REVERSAL, BUT IF A THIRD REMAND IS ORDERED, REASSIGNMENT TO ANOTHER JUDGE WOULD BE APPROPRIATE

1. Due to Simon's Misrepresentations to his Former Clients and the District Court and his Stonewalling of Production of the Edgeworths' Complete Client File, $33,811.25 Would Actually Over Compensate Him for his Post-Discharge Services.

Absent Simon's misconduct detailed in this brief, the Edgeworths acknowledge that the record and the law would support this Court directing a judgment for the reasonable value (as Simon himself valued his time) of the 71.10 hours Simon chose to describe and present to the district court in 2018. Compare *Ashokan v. State Dept. of Ins.*, 109 Nev. 662, 856 P.2d 244, 247 (1993), relied on in the pending writ petition (Court has constitutional prerogative "to entertain the writ" [Nev. Const. art. 6] "where circumstances reveal urgency or strong necessity") *with Barrow v. Falck,* 11 F.3d 729, 730 (7th Cir. 1994) (concluding it was appropriate for an appellate court to direct the amount of a judgment when the lower court has not followed the instructions issued in remand, which has twice been the case here); *In re Sanford Fork & Tool Co.*, 160 U. S. 247, 256 (1895) (writ of mandamus is appropriate when lower court does not follow prior mandate).

Simon acknowledges that he offered his "super bill" to the district court on January 24, 2018 with his motion to adjudicate the value of his lien (Case No. 86467, Writ Ans. at 14-15). He not only had a duty, but ample opportunity during the 8 months between his January 2018 motion to adjudicate his false lien and the adjudication of the lien in October 2018 to present to the district court anything else he wanted her to consider in valuing his services. He chose to do nothing other than present his superbill and claim a contingent-like fee based on a colleague's opinion of what his services (mostly pre-termination) were worth.

Permitting Simon to enlarge the record ***over five years*** later, especially when some of the work claimed in his 2023 briefing took place ***before*** the date he submitted his superbill to the district court in 2018 would be unjust. Recall that Simon claimed the superbill was meticulously prepared after a full review of his entire file in 2018. AA1378; AA1424:16-17; *see also* AA1363-65 (relying on work done ***before*** January 24, 2018 to enlarge his superbill); *but see*, Rest. Third of the Law Governing Lawyers § 39 cmt. b(ii) (attorney is the appropriate person to bear the risk of indeterminacy since he failed to memorialize the terms of his engagement).

It is not a coincidence that Simon's additions to his account of time spent were raised only after this Court ordered him to produce to the Edgeworths their complete file because he did not want the Edgeworths to see confirmation of their contention that he was not truthful with them when he suggested that the Viking settlement discussions had not even begun on November 27, 2017 (when Angela Edgeworth begged for a status and asked that she and Mr. Edgeworth be copied on anything regarding the settlement). *See* Writ Pet. in Case No. 86467 at 24-25 (discussing some of Simon's add-ons).

2. If this Case is to Continue to be Litigated, it Should be Litigated Before a New Judge.

After two appeals, district court Judge Jones has demonstrated she is unwilling or unable to look beyond the dollars recovered from the Viking settlement and focus on the Court's two mandates. The Court in *Wickliffe v. Sunrise*, 104 Nev. 777, 783, 766 P.2d 1322, 1327 (1988) determined reassignment was proper after the district court, like Judge Jones has in this case, twice failed to follow the mandate. In arguing reassignment is not appropriate, Simon merely claims that elements of a Ninth Circuit Court of Appeals case were not addressed. Ans. at 31. In *State of Cal. v. Montrose Chem. Corp. of California*, 104 F.3d 1507, 1521 (9th Cir. 1997), the Ninth

Circuit considered the appropriateness of reassignment under a federal statute. Not only is the case not binding on this Court, but it is inapposite.[24]

When the substance of the district court's Fifth Amended Order is objectively reviewed, the post-discharge services the district court considered are the finalizing of the ***pre-discharge*** settlements, including the $53,000 net increase in the Lange Settlement, removal of the confidentiality clause, some clean up hearings to resolve the claims between Viking and Lange, and setting up one bank account. ***These same services are included***

---

[24] Although *Wickliffe* confirms that reassignment for failure to follow prior mandates is appropriate, the Court can elect to look to other courts for guidance as to when reassignment is proper. The factors set out in the *Montrose Chemical* case are common-sense ones: "(1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness." 104 F.3d at 1521 As to the first factor, Judge Jones has twice shown an inability to accommodate the Court's mandate. Consideration of the appearance-of-justice factor also favors reassignment in this case given that we are on the third appellate proceeding to address the same issue on which this Court gave clear instructions in the first appeal and reiterated the instructions in the second appeal. A new judge could easily consider Simon's post-discharge services as set out in his superbill and value them in a manner that is reasonable under *Brunzell but takes his misconduct into consideration,* which could result in a judgment for less than $33,811.25.

in the 71.10 hours Simon listed on his superbill – the only 2018 record of his services he elected to offer when his time and fees were an issue to be decided by the district court. Yet the district court awarded Simon $200,000 in quantum meruit fees (more than $2,800 per hour) for 71.10 hours of administrative wrap-up work. That is unreasonable under *Brunzell*. If the Court does not direct entry of a judgment, reassignment to a new judge to reasonably value the services under *Brunzell* would be appropriate. [25]

IX. CONCLUSION.

For the foregoing reasons, the Edgeworths ask that the Court vacate the district court's Fifth Amended Order and enter an order awarding Simon not more than $33,811.25 in fees for his and his associate's minimal post-discharge work, which is the most Simon's contemporaneous 2018 records will reasonably support.

[25] Although the Edgeworths sincerely believe Simon should not be rewarded for his misconduct and misrepresentations (as discussed herein) at their expense, they would also like to put the time and expense of this lawsuit behind them and for that reason would accept a decision from the Court confirming that Simon's claim for $200,000 in quantum meruit ***is not worth more than*** $33,811.25.

Alternatively, if the Court remains unwilling to direct entry of judgment and is inclined to vacate the Fifth Amended Order and remand this case for a third time, it should order that it be assigned to another district court judge for consideration of an appropriate quantum meruit value based on the record Simon submitted in 2018.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

Steve Morris, Bar No. #1543
Rosa Solis-Rainey, Bar No 7921
801 S. Rancho Dr., Ste. B4
Las Vegas, NV 89106

Attorneys for Edgeworth Appellants

CERTIFICATE OF COMPLIANCE

1. I certify that I have read the **EDGEWORTH APPELLANTS' OPENING BRIEF**, 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 Nev. R. App. P. 32(a)(4), the typeface requirements of Nev. R. App. P. 32(a)(5), the type style requirements of Nev. R. App. P. 32(a)(6), and limitations in Nev. R. App. P. 32(a)(7) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Palatino 14 point font. Excluding the parts of the brief exempted by Nev. R. App. P. 32(a)(7)(C), it contains 9970 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.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
Steve Morris, Bar No. #1543
Rosa Solis-Rainey, Bar No. 7921
801 S. Rancho Dr., Ste. B4
Las Vegas, NV 89106

Attorneys for Edgeworth Appellants

CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that a true and correct copy of the foregoing **EDGEWORTH APPELLANTS' OPENING BRIEF** was served by the following method(s):

☑ Supreme Court's EFlex Electronic Filing System

Peter S. Christiansen
Kendelee L. Works
CHRISTIANSEN LAW OFFICE
810 S. Casino Center Blvd., Ste 104
Las Vegas, NV 89101

Attorneys for Respondent Law Office of Daniel S. Simon, A Professional Corporation; and Daniel S. Simon

Dated this 4th day of December, 2023.

By: /s/ CATHY SIMICICH