

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC

Petitioners,

vs.

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

Respondents.

Supreme Court Case No. 86676
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Related Case No. 86467
Elizabeth A. Brown
Clerk of Supreme Court

(District Court A-16-738444-C)

MOTION TO CONSOLIDATE WRIT AND APPEAL

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I. Introduction

Respondent Simon requests consolidation of the petition for extraordinary writ (case no. 86467) with the direct appeal (case no. 86676) both of which are currently pending before the Nevada Supreme Court. Consolidation is appropriate because Petitioners/Appellants, the Edgeworths, requested identical relief from the same district court order by way of the petition for extraordinary relief and the direct appeal.

II. Argument

On April 27, 2023, the Edgeworths filed their Petition for a Writ of Mandamus concerning the District Court's Fifth Amended Decision and Order on Motion to Adjudicate Lien, case no. 86467.

On May 24, 2023, the Edgeworths filed a Notice of Appeal of the District Court's Fifth Amended Decision and Order on Motion to Adjudicate Lien, case no. 86676.

The petition for extraordinary relief (case no. 86467) and the direct appeal (case no. 86676) both challenge the same district court order, involve the same parties, and seek similar relief from this Court. (See, e.g., The Edgeworths' Motion to Stay Briefing filed September 22, 2023, at page 2, "Because the issues on appeal will be nearly identical to those raised in

the petition, Appellants ask that the Court stay briefing on the appeal until the writ petition is decided.”.)

The request for extraordinary relief brought in case no 86467 is fully briefed and is ready for decision while the Edgeworths just recently filed their opening brief in the direct appeal, case no. 86676.

The Nevada Rules of Appellate Procedure allow for the consolidation of appeals. NRAP 3(b) states:

(b) Joint or Consolidated Appeals

(1) When two or more parties are entitled to appeal from a district court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its own motion or upon motion of a party.

NRAP 3(b) does not address consolidation of a petition for an extraordinary writ with a direct appeal. However, NRAP 1(c) provides that the Rules should be “liberally construed to secure the proper and efficient administration of the business and affairs of the courts...”. See, *Two Minor Children v. The Second Judicial Dist. Ct.*, 95 Nev. 225, 592 P.2d 166 (1979)(in *Two Minor Children* appeals were consolidated with a petition for writ of prohibition).

Consolidation of the Edgeworths' writ proceeding with their direct appeal will promote efficient functioning of the courts. Both the writ proceeding, and the direct appeal involve identical parties, address the same district court order, and request similar relief. As such, double tracking the dispute doubles the work involved with no obvious benefit while consolidation will eliminate the increase in time and effort expended by the Court and the parties caused by multiplying the proceedings. See, *State, Dept., of Motor Vehicles and Public Safety, Nevada Highway Patrol Div., v. Hutchings*, 106 Nev. 453, 454 at fn 1, 795 P.2d 497, 498 at fn. 1 (1990).

In addition, as case no. 86467 is fully briefed, requiring additional briefing in case no. 86676 will only needlessly increase the time and expense of the parties and stress the resources of the courts for no obvious purpose.

In the interests of judicial economy, pursuant to NRAP 1(c) & 3(b), Simon respectfully requests that this Court consolidate the pending petition with the direct appeal.

Simon further respectfully requests that as case no. 86467 has been fully briefed and is ready for decision, that this Court suspend the briefing

schedule in case no 86676 as unnecessary and dispose of the matter after consolidation based on the briefing in case no. 86467.

III. Conclusion

Respondent Simon respectfully requests that the Court consolidate the subject petition for an extraordinary writ (case no. 86467) with the direct appeal (case no. 86676), suspend the briefing schedule in case no. 86676, and dispose of the consolidated proceedings based on the completed briefing in case no. 86467.

Dated this 13th day of December 2023.

/s/ James R. Christensen

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of December 2023, I served a copy of the foregoing MOTION TO CONSOLIDATE WRIT AND APPEAL electronically to all registered parties.

/s/ Dawn Christensen

an employee of JAMES R. CHRISTENSEN