

DONALD EBY
PLAINTIFF

20-CV-01031

V.

DEPT. Electronically Filed
Feb 14 2024 02:21 PM
Elizabeth A. Brown
Clerk of Supreme Court

J. L. O.

DEFENDENTS

DISTRICT COURT
LYON COUNTY NEVADA

SUPPLEMENTAL NOTICE OF APPEAL

COMES NOW PLAINTIFF EBY APPEALS TO THE
N.S.C. THE DENIAL OF HIS MOTION FOR
COMPENTENCY EVALUATION SUPPLEMENTING
N.S.C. # 86220 ENTERED ON 1/24/24

Donald Eby 2/5/24

Case No. 20-CV-01031

Dept. No. I

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * *

DONALD DOUGLAS EBY,

Appellant

vs

JOHNSTON LAW OFFICE P.C., BRAD JOHNSTON,

LeANN SCHUMANN,

Respondent

CASE APPEAL STATEMENT

1. **DONALD DOUGLAS EBY** is the name of the appellant filing this case appeal statement.

2. Honorable **John P. Schlegelmilch** issued the order being appealed.

3. Donald Douglas Eby is the Appellant in this case.

Donald Douglas Eby 1262 Centerville Lane, Gardnerville, Nevada 89460 is in Proper Person on this appeal.

4. Johnston Law Office P.C., Brad Johnston and LeAnn Schumann are the respondents in this case.

James E. Whitmire, Esq. 10100 W. Charleston Blvd, Suite 250, Las Vegas, Nevada 89135, represents the respondents in this case.

5. James E. Whitmire, Esq. is licensed to practice in the State of Nevada.

6. Appellant was in Proper Person in District Court proceedings.

7. Appellant is filing appeal in Proper Person.

8. No request to proceed in forma pauperis has been filed. The Appellant has failed to pay the required \$250.00 Supreme Court Filing Fee, \$500.00 Surety Bond and \$24.00 District Court

1 filing fee. A letter was mailed to the Appellant on March 1, 2023 advising Appellant of the
2 non-payment of fees.

3 9. The proceedings commenced in District Court on a Complaint filed on September 30, 2020.

4 10. This is a civil case for Negligence – Other. Judge P. Schlegelmilch entered an Order Denying
5 Motion for Order for Competency Evaluation on January 24, 2024.

6 11. This matter has previously been the subject of appeals in the Supreme Court filed under
7 docket #82914, docket #83299 and docket #86220.

8 12. This case does not involve child custody/visitation.

9 13. This case does not have the possibility of settlement.

10
11 Dated this 9th day of February, 2024.

12
13 

14 Andrea Andersen, Clerk

15 911 Harvey Way #4

16 Yerington, NV 89447

17 (775)463-6503
18
19
20
21
22
23
24
25
26
27
28

Case Snapshot: Fri Feb 09 17:19:35 PST 2024

Case Number: 20-CV-01031

Case Name: DONALD DOUGLAS EBY, BRAD JOHNSTON, LEANN SCHUMANN, JOHNSTON
LAW OFFICE P.C. ~ COMPLAINT

Date Filed: 09-30-2020

Disposition: Closed

Parties:

PTF: DONALD DOUGLAS EBY

Address: 1262 Centerville Lane, Gardnerville NV 89460

OTHR: JWCONVERSION .

DEF: JOHNSTON LAW OFFICE P.C.

Address: 22 State Route 208, Yerington NV 89447

Atty: James Whitmire

Atty: Brad Johnston

SIMONS HALL JOHNSTON PC

DEF: LeANN SCHUMANN

Address: 1150 Selmi Dr., Reno NV 89512

Atty: James Whitmire

Atty: Brad Johnston

SIMONS HALL JOHNSTON PC

DEF: BRAD JOHNSTON

Address: 22 State Route 208, Yerington NV 89447

Atty: James Whitmire

Atty: Brad Johnston

SIMONS HALL JOHNSTON PC

DEPT1: John P. Schlegelmilch - Dept 1

JDG: John P. Schlegelmilch - Dept 1

Hearings:

Dockets:

02-09-2024 Case Appeal Statement - Re Supplemental Notice of Appeal filed 2-7-24

02-09-2024 112.1 Case Appeal Statement - Re Supplemental Notice of Appeal filed 2-7-24

02-09-2024 Notice of Entry of Order - Order Denying Motion for Order for Competency Evaluation

02-09-2024 111.1 Notice of Entry of Order - Order Denying Motion for Order for
Competency Evaluation

02-07-2024 Counter Filings - Reply to Opposition to Vacate Order

02-07-2024 110.1 Counter Filings - Reply to Opposition to Vacate Order

02-07-2024 Counter Filings - Supplemental Notice of Appeal

02-07-2024 109.1 Counter Filings - Supplemental Notice of Appeal

02-07-2024 Certificate of Mailing (Order Denying Motion to Vacate Order)

02-07-2024 108.1 Certificate of Mailing (Order Denying Motion to Vacate Order)

02-06-2024 Order Denying Motion to Vacate Order

02-06-2024 107.1 Order Denying Motion to Vacate Order

02-05-2024 Counter Filings - Motion for Enlargement of Time (to Respond to Defendants Opposition to Vacate)

02-05-2024 106.1 Counter Filings - Motion for Enlargement of Time (to Respond to Defendants Opposition to Vacate)

01-24-2024 Index to Record on Appeal

01-24-2024 104.1 Index to Record on Appeal

01-24-2024 Certificate of Mailing (Order Denying Motion for Order for Competency Evaluation)

01-24-2024 102.1 Certificate of Mailing (Order Denying Motion for Order for Competency Evaluation)

01-24-2024 Order Denying Motion for Order for Competency Evaluation

01-24-2024 101.1 Order Denying Motion for Order for Competency Evaluation

01-22-2024 Request for Submission Re Plaintiff's Motion for Competency Evaluation

01-22-2024 100.1 Request for Submission Re Plaintiff's Motion for Competency Evaluation

01-22-2024 Opposition to Motion to Vacate Order

01-22-2024 99.1 Opposition to Motion to Vacate Order

01-10-2024 Counter Filings - Motion to Vacate Order

01-10-2024 98.1 Counter Filings - Motion to Vacate Order

01-09-2024 Counter Filings -Reply to Opposition to Compentecy Evaluation

01-09-2024 97.1 Counter Filings -Reply to Opposition to Compentecy Evaluation

01-05-2024 Counter Filings -Order Directing Transmission of Record (S.C.)

01-05-2024 96.1 Counter Filings -Order Directing Transmission of Record (S.C.)

12-15-2023 Motion for Enlargement of Time

12-15-2023 95.1 Motion for Enlargement of Time

12-11-2023 Opposition to Motion for Competency Evaluation

12-11-2023 94.1 Opposition to Motion for Competency Evaluation

11-29-2023 Motion for Order for Competency Evaluation
11-29-2023 93.1 Motion for Order for Competency Evaluation

03-22-2023 Receipt for Documents (S.C.) (\$250 Filing Fee paid 3-20-23)
03-22-2023 92.1 Receipt for Documents (S.C.) (\$250 Filing Fee paid 3-20-23)

03-10-2023 Receipt for Documents (S.C.)(Notice of Appeal filed 3-7-23)
03-10-2023 87.1 Receipt for Documents (S.C.)(Notice of Appeal filed 3-7-23)

03-07-2023 Notice of Appeal (Filed 3-7-23 with S.C.)
03-07-2023 86.1 Notice of Appeal (Filed 3-7-23 with S.C.)

03-07-2023 Case Appeal Statement (3)
03-07-2023 85.1 Case Appeal Statement (3)

02-28-2023 Notice of Appeal (3)
02-28-2023 83.1 Notice of Appeal (3)

02-13-2023 Notice of Entry of Order (Order Dismissing Case With Prejudice)
02-13-2023 82.1 Notice of Entry of Order (Order Dismissing Case With Prejudice)

01-31-2023 Order Dismissing Case With Prejudice
01-31-2023 81.1 Order Dismissing Case With Prejudice

01-30-2023 Request for Submission (Post-Appeal Briefs & Motion to Vacate Order and Judicial Notice)
01-30-2023 80.1 Request for Submission (Post-Appeal Briefs & Motion to Vacate Order and Judicial Notice)

01-09-2023 Defendant's Reply Memorandum of Points and Authorities Concerning Dismissal of Plaintiff's Case with Prejudice
01-09-2023 79.1 Defendant's Reply Memorandum of Points and Authorities Concerning Dismissal of Plaintiff's Case with Prejudice

12-27-2022 Reply to Opposition to Motion to Vacate
12-27-2022 78.1 Reply to Opposition to Motion to Vacate

12-21-2022 Opposition to Motion to Vacate Order and Judicial Notice
12-21-2022 77.1 Opposition to Motion to Vacate Order and Judicial Notice

12-21-2022 Plaintiff's Memorandum of Points and Authorities and Opposition to Defendant's Points and Authorities
12-21-2022 76.1 Plaintiff's Memorandum of Points and Authorities and Opposition to Defendant's Points and Authorities

12-09-2022 Order Granting Extension

12-09-2022 75.1 Order Granting Extension

12-12-2022 Motion to Vacate Order and Judicial Notice
12-12-2022 74.1 Motion to Vacate Order and Judicial Notice

11-30-2022 Opposition to Motion for Enlargement of Time
11-30-2022 73.1 Opposition to Motion for Enlargement of Time

12-02-2022 Defendants' Memorandum of Points and Authorities Concerning Dismissal of Plaintiff's Case with Prejudice
12-02-2022 72.1 Defendants' Memorandum of Points and Authorities Concerning Dismissal of Plaintiff's Case with Prejudice

11-22-2022 Motion for Enlargement of Time- Donald Eby
11-22-2022 71.1 Motion for Enlargement of Time- Donald Eby

11-16-2022 Transcript Hearing 11-4-22
11-16-2022 70.1 Transcript Hearing 11-4-22

11-07-2022 Briefing Order
11-07-2022 69.1 Briefing Order

10-17-2022 Setting Memo (11-4-22)
10-17-2022 68.1 Setting Memo (11-4-22)

10-04-2022 Clerk's Certificate - (S.C.)
10-04-2022 67.1 Clerk's Certificate - (S.C.)

10-04-2022 Remittitur - (S.C.)
10-04-2022 66.1 Remittitur - (S.C.)

09-22-2022 Order Affirmed in Part, Reversed in Part, and Remanded (S.C.)
09-27-2022 65.1 Order Affirmed in Part, Reversed in Part, and Remanded (S.C.)

05-13-2022 Other
05-13-2022 64.1 Other

03-15-2022 Notice of Transfer to Court of Appeals (S.C.)
03-15-2022 63.1 Notice of Transfer to Court of Appeals (S.C.)

09-10-2021 Proof of Mailing (Supreme Court)
10-22-2021 62.1 Proof of Mailing (Supreme Court)

09-08-2021 Index to Record on Appeal
09-08-2021 61.1 Index to Record on Appeal

08-09-2021 Order for Transmission of Record (S.C.)

08-23-2021 60.1 Order for Transmission of Record (S.C.)

08-09-2021 Receipt for Documents (S.C.)

08-10-2021 59.1 Receipt for Documents (S.C.)

08-02-2021 Receipts for Documents (S.C.)

08-02-2021 58.1 Receipts for Documents (S.C.)

04-13-2021 Notice of Entry of Order (Order Striking Fugitive Documents and Dmissing Action)

07-28-2021 57.1 Notice of Entry of Order (Order Striking Fugitive Documents and Dmissing Action)

07-28-2021 Case Appeal Statement (2)

07-28-2021 56.1 Case Appeal Statement (2)

07-28-2021 Notice of Appeal (2)

07-28-2021 55.1 Notice of Appeal (2)

07-06-2021 Order Denying Motion for New Trial

07-07-2021 54.1 Order Denying Motion for New Trial

07-01-2021 Clerk's Certificate (S.C.)

07-01-2021 53.1 Clerk's Certificate (S.C.)

07-01-2021 Remittitur (S.C.)

07-01-2021 52.1 Remittitur (S.C.)

06-21-2021 Civil Process Form - James Whitmore (Served 5-19-21)

06-21-2021 51.1 Civil Process Form - James Whitmore (Served 5-19-21)

06-21-2021 Request to Clerk for Entry of Default as Against Named Defendant

06-21-2021 50.1 Request to Clerk for Entry of Default as Against Named Defendant

06-16-2021 Reply to Opposition to Motion for a New Trial

06-16-2021 49.1 Reply to Opposition to Motion for a New Trial

06-09-2021 Order Dismissing Appeal- S.C.

06-09-2021 48.1 Order Dismissing Appeal- S.C.

06-08-2021 Letter to Donald Eby RE Paperwork

06-09-2021 47.1 Letter to Donald Eby RE Paperwork

05-27-2021 Motion for Enlargement of Time

05-27-2021 46.1 Motion for Enlargement of Time

05-20-2021 Opposition to Motion for New Trial

05-20-2021 45.1 Opposition to Motion for New Trial

05-18-2021 Receipt for Documents (S.C.)

05-18-2021 44.1 Receipt for Documents (S.C.)

05-12-2021 Case Appeal Statement

05-12-2021 43.1 Case Appeal Statement

05-10-2021 Motion for a New Trial

05-12-2021 42.1 Motion for a New Trial

05-10-2021 Notice of Appeal

05-12-2021 41.1 Notice of Appeal

04-27-2021 Motion for a New Trial - Submitted By Theodore Stevens

04-30-2021 40.1 Motion for a New Trial - Submitted By Theodore Stevens

04-27-2021 Motion to Vacate Void Judgment - Filed By Theodore Stevens

04-30-2021 39.1 Motion to Vacate Void Judgment - Filed By Theodore Stevens

04-30-2021 Letter from State Bar of Nevada 4_27_21

04-30-2021 38.1 Letter from State Bar of Nevada 4_27_21

04-13-2021 Order Striking Fugitive Documents and Dismissing Action With Prejudice

04-13-2021 37.1 Order Striking Fugitive Documents and Dismissing Action With Prejudice

04-12-2021 Response-Opposition to Motion to Enlarge Time to File Second Amended Complaint

04-12-2021 36.1 Response-Opposition to Motion to Enlarge Time to File Second Amended Complaint

04-12-2021 Second Amended Complaint (2)

04-12-2021 35.1 Second Amended Complaint (2)

04-07-2021 Objection to Filed Order of Motion to Dismiss

04-09-2021 34.1 Objection to Filed Order of Motion to Dismiss

04-07-2021 Transcript Motion Hearing 3-2-21

04-07-2021 33.1 Transcript Motion Hearing 3-2-21

04-05-2021 Limited Power of Attorney and Note from Petitioner (Received From Recorder's Office 4-5-21)

04-07-2021 32.1 Limited Power of Attorney and Note from Petitioner (Received From Recorder's Office 4-5-21)

04-05-2021 Motion for Enlargement of Time (Filed by T. Stevens)

04-05-2021 31.1 Motion for Enlargement of Time (Filed by T. Stevens)

03-31-2021 Letter Whitmire to Eby

04-01-2021 30.1 Letter Whitmire to Eby

03-29-2021 Letter to Court from Ted Stevens

03-30-2021 29.1 Letter to Court from Ted Stevens

03-30-2021 Notice of Appearance - Theodore Stevens

03-30-2021 28.1 Notice of Appearance - Theodore Stevens

03-25-2021 Limited Power of Attorney

03-25-2021 27.1 Limited Power of Attorney

03-10-2021 Documents From Plaintiff (Received 3-10-21)

03-16-2021 26.1 Documents From Plaintiff (Received 3-10-21)

03-12-2021 Order on Motion to Dismiss

03-12-2021 25.1 Order on Motion to Dismiss

03-12-2021 Request for Submission of Proposed Order

03-12-2021 24.1 Request for Submission of Proposed Order

02-26-2021 Motion to Strike Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss (2)

02-26-2021 23.1 Motion to Strike Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss (2)

02-24-2021 Motion for Leave to File Second Amended Complaint

02-25-2021 22.1 Motion for Leave to File Second Amended Complaint

02-23-2021 Response to Plaintiff's Motion for Video Appearance of Theodore Stevens

02-25-2021 21.1 Response to Plaintiff's Motion for Video Appearance of Theodore Stevens

02-18-2021 Exhibit F CD to Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint

02-18-2021 Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint with CD

02-18-2021 19.1 Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint with CD

02-18-2021 Order Denying Motion & Request

02-18-2021 18.1 Order Denying Motion & Request

02-18-2021 Motion for Theodore Stevens, An Inmate at Lovelock Corr. Center to Appear by Video

02-18-2021 17.1 Motion for Theodore Stevens, An Inmate at Lovelock Corr. Center to Appear by Video

02-18-2021 Notice of Intent to Appear by Simultaneous Transmission Equipment

02-18-2021 16.1 Notice of Intent to Appear by Simultaneous Transmission Equipment

02-16-2021 Motion to Strike Defendant's Reply in Support of Motion to Dismiss
02-17-2021 15.1 Motion to Strike Defendant's Reply in Support of Motion to Dismiss

02-09-2021 Amended Opposition to Defendant's Motion to Dismiss - Redacted
02-12-2021 14.1 Amended Opposition to Defendant's Motion to Dismiss - Redacted

02-09-2021 Amended Opposition to Defendant's Motion to Dismiss
02-12-2021 13.1 Amended Opposition to Defendant's Motion to Dismiss

02-08-2021 Setting Memo (3-2-21)
02-08-2021 12.1 Setting Memo (3-2-21)

02-01-2021 Opposition to Defendant's Motion to Dismiss- Redacted
02-02-2021 11.1 Opposition to Defendant's Motion to Dismiss- Redacted

02-01-2021 Opposition to Defendant's Motion to Dismiss
02-02-2021 10.1 Opposition to Defendant's Motion to Dismiss

02-02-2021 Request for Submission
02-02-2021 9.1 Request for Submission

02-02-2021 Reply in Support of Motion to Dismiss Pltf's First Amnd Comp
02-02-2021 8.1 Reply in Support of Motion to Dismiss Pltf's First Amnd Comp

01-26-2021 Notice of Intent to File Opposition to Defendants Motion to Dismiss
01-28-2021 7.1 Notice of Intent to File Opposition to Defendants Motion to Dismiss

01-12-2021 Motion to Dismiss Plaintiff's First Amended Complaint
01-19-2021 6.1 Motion to Dismiss Plaintiff's First Amended Complaint

01-04-2021 Summons - On Return (LeAnn Schumann Served 12-29-20)
01-04-2021 5.1 Summons - On Return (LeAnn Schumann Served 12-29-20)

01-04-2021 Summons - On Return (Brad Johnston Served 12-22-20)
01-04-2021 4.1 Summons - On Return (Brad Johnston Served 12-22-20)

12-10-2020 First Amended Complaint Arbitration Exempt
12-10-2020 3.1 First Amended Complaint Arbitration Exempt

09-30-2020 Complaint
09-30-2020 2.1 Complaint

09-30-2020 Civil Cover Sheet
09-30-2020 1.1 Civil Cover Sheet

Case No. 20-CV-01031

Dept. No. I

**IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON**

DONALD DOUGLAS EBY,

Plaintiff,

vs.

JOHNSTON LAW OFFICE P.C., BRAD
JOHNSTON AND LEE ANN SCHUMANN,

Defendants.

**ORDER DENYING MOTION FOR
ORDER FOR COMPETENCY
EVALUATION**

This matter came before the Court upon a Motion for Order for Competency Evaluation (“Motion”), filed by Plaintiff, DONALD DOUGLAS EBY, on November 27, 2023, to which the Defendants first filed an Opposition, on December 11, 2023, and later a Request for Submission regarding the same, on January 22, 2024.

The Court finds and notes that in March, 2023, Plaintiff appealed to the Supreme Court of Nevada this Court’s *Order Dismissing Case with Prejudice*, entered on January 31, 2023. This matter is currently pending on appeal with the Supreme Court.

As a general matter, “a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this [Supreme] court.” *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987). However, as the Supreme Court pointed out on numerous occasions, the “district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal's merits.” *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 530 (2006).

1 This Court needs not delve into analysis whether the Plaintiff's Motion for competency
2 evaluation and its underlying arguments are entirely independent from the gist of the dismissal
3 order currently pending on appeal, since the Supreme Court of Nevada made clear that "once the
4 district court dismissed this case with prejudice, it lost all jurisdiction concerning that judgment,
5 except to alter, set aside, or vacate its judgment in conformity with the Nevada Rules of Civil
6 Procedure. Otherwise the district court is without jurisdiction to conduct proceedings with respect
7 to the parties' continuing dispute." *SFPP, L.P. v. Second Judicial Dist. Ct.*, 123 Nev. 608, 609,
8 173 P.3d 715 (2007).
9

10 As the case at hand was dismissed with prejudice by this Court's Order on January 31,
11 2023, the Court retains no further jurisdiction to consider the discovery issues raised by the
12 Plaintiff's Motion. Entering "the order for dismissal with prejudice effectively ended the
13 jurisdiction of the district court." *Id.*, at 609, 173 P.3d at 715-716. Even if this Court would to have
14 jurisdiction to entertain this particular Motion, Plaintiff presented insufficient facts, without
15 affidavit, to establish any current competency issue.
16

17 For these reasons,

18 **IT IS HEREBY ORDERED** that the Motion for Order for Competency Evaluation is
19 **DENIED.**

20 **IT IS SO ORDERED.**

21
22 

23
24

HON. JOHN P. SCHLEGELMILCH,
DISTRICT COURT JUDGE
25
26
27
28

Case No. 20-CV-01031

Dept. No. II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

* * *

DONALD DOUGLAS EBY,

Plaintiff

vs

**NOTICE OF ENTRY OF
ORDER**

JOHNSTON LAW OFFICE P.C., BRAD

JOHNSTON AND LEE ANN SCHUMANN,

Defendants

PLEASE TAKE NOTICE that on the 24th day of January, 2024, the Court entered an Order Denying Motion for Order for Competency Evaluation in this matter, a true and correct copy of which is attached to this notice.

Dated: February 9, 2024

ANDREA ANDERSEN,

Court Administrator

By Andrea Andersen, Clerk

CERTIFICATE OF SERVICE BY MAIL

I the undersigned hereby certify that I am an employee of the Third Judicial District Court, and that on this date I deposited for mailing at Yerington, Nevada a copy of the foregoing Notice of Entry of Order addressed to:

Donald Douglas Eby
1262 Centerville Lane
Gardnerville, NV 89460

James Whitmire, Esq.
10100 W. Charleston Blvd., Ste 250
Las Vegas, NV 89135

DATED: this 9th day of February, 2024.

Andrea Andersen, Clerk

Case No. 20-CV-01031

Dept. No. I

**IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON**

DONALD DOUGLAS EBY,

Plaintiff,

vs.

JOHNSTON LAW OFFICE P.C., BRAD
JOHNSTON AND LEE ANN SCHUMANN,

Defendants.

**ORDER DENYING MOTION FOR
ORDER FOR COMPETENCY
EVALUATION**

This matter came before the Court upon a Motion for Order for Competency Evaluation ("Motion"), filed by Plaintiff, DONALD DOUGLAS EBY, on November 27, 2023, to which the Defendants first filed an Opposition, on December 11, 2023, and later a Request for Submission regarding the same, on January 22, 2024.

The Court finds and notes that in March, 2023, Plaintiff appealed to the Supreme Court of Nevada this Court's *Order Dismissing Case with Prejudice*, entered on January 31, 2023. This matter is currently pending on appeal with the Supreme Court.

As a general matter, "a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this [Supreme] court." *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987). However, as the Supreme Court pointed out on numerous occasions, the "district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal's merits." *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 530 (2006).

1 This Court needs not delve into analysis whether the Plaintiff's Motion for competency
2 evaluation and its underlying arguments are entirely independent from the gist of the dismissal
3 order currently pending on appeal, since the Supreme Court of Nevada made clear that "once the
4 district court dismissed this case with prejudice, it lost all jurisdiction concerning that judgment,
5 except to alter, set aside, or vacate its judgment in conformity with the Nevada Rules of Civil
6 Procedure. Otherwise the district court is without jurisdiction to conduct proceedings with respect
7 to the parties' continuing dispute." *SFPP, L.P. v. Second Judicial Dist. Ct.*, 123 Nev. 608, 609,
8 173 P.3d 715 (2007).
9

10 As the case at hand was dismissed with prejudice by this Court's Order on January 31,
11 2023, the Court retains no further jurisdiction to consider the discovery issues raised by the
12 Plaintiff's Motion. Entering "the order for dismissal with prejudice effectively ended the
13 jurisdiction of the district court." *Id.*, at 609, 173 P.3d at 715-716. Even if this Court would to have
14 jurisdiction to entertain this particular Motion, Plaintiff presented insufficient facts, without
15 affidavit, to establish any current competency issue.
16

17 For these reasons,

18 **IT IS HEREBY ORDERED** that the Motion for Order for Competency Evaluation is
19 **DENIED.**

20 **IT IS SO ORDERED.**

21
22 

23
24 **HON. JOHN P. SCHLEGELMILCH,**
25 **DISTRICT COURT JUDGE**
26
27
28

20-CV-01031 – Donald Eby vs. Johnston Law Offices P.C., Brad Johnston and Lee Ann Schumann – Minutes

<p>11/04/2022 09:00 AM 11/04/2022 09:30 AM</p>	<p>Held</p>	<p>☐ Status Hearing Event Type Category: Scheduled Event Participants: John P. Schlegelmilch - Dept 1 JOHNSTON, BRAD EBY, DONALD Tanya Sceirine Clerk lawclerk1 Dept I Whitmire, James E. Resources: John P. Schlegelmilch - Dept 1 Note: Status hearing post remittitur from the Supreme. Based on the opinion issued by the Court of Appeals which upheld the striking of the complaint and Mr. Stevens unauthorized practice of law. Court found the only potential issue was the malpractice action based on the power of attorney. Court felt going forward on the Young v Riberio factors the Court will need some type of pleadings. Court heard statement of Mr. Whitmire and Mr. Eby. Court ordered simultaneous briefs on the Young factors as to dismissal with or without prejudice. Briefs are due December 2, 2022 and any reply briefs are due December 16, 2022. Court advised that if either party requests a hearing the Court will hold hearing for argument otherwise the Court will deem the matter submitted. Court advised proposed orders be submitted with originating briefs. In relation to Mr. Stevens the Court ordered that he is not to pen, file or write anything in relation to this matter and Court will require Mr. Eby file affirmations that Stevens did not write the document. Court advised Mr. Eby he needs to follow NRCP. Court advised Mr. Eby that it does not take any settlement demands and is precluded from looking at any settlement documents.</p>
<p>03/02/2021 01:30 PM 03/02/2021 02:30 PM</p>	<p>Held</p>	<p>☐ Motion Hearing Event Type Category: Scheduled Event Participants: Court Room B John P. Schlegelmilch - Dept 1 JOHNSTON, BRAD - (Defendant) Patrick Geurts Staff EBY, DONALD - (Plaintiff, in Pro Per) Whitmire, James E. Andrea Andersen Deputy Clerk Resources: Court Room B Note: Court denied the Motion to Strike Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss and Motion for Leave to File Second Amended Complaint as it was filed by an</p>

	<p>unauthorized individual that is not licensed to practice in the State of Nevada. Court will refer Ted Stevens and Donald Eby to the State Bar and the Pershing, Lyon and Douglas County District Attorneys for unlawful practice. Court noted Mr. Stevens and Mr. Eby entered into a contract in an attempt to get around the February 18, 2021 Order. Mr. Whitmire and Mr. Eby argued the Motion to Dismiss. Court granted the Motion to Dismiss except the claim of malpractice relating to breach fiduciary duty and the power of attorney. Court granted Plaintiff thirty (30) days to file a second amended complaint to allege particular facts and circumstances constituting the breach. If the Plaintiff fails to file the second amended complaint within thirty (30) days, the matter will be dismissed without prejudice. Defendant to file an answer to the second amended complaint within twenty (20) days of service. Court finds no grounds presented for other claims. Court advised parties, if anything comes in from the prison from Mr. Stevens, it will be filed, however, it will not be considered and the matter will be forwarded to the proper authorities for unauthorized practice of law. Court will not condone Mr. Stevens to file in the case as Mr. Stevens is not a real party in interest in this case. Court directed Plaintiff to refer to the Third Judicial District Court Rules to ensure his pleadings are in proper format. Court will not accept the Assignment of Interest because it is a retainer agreement by a non-lawyer and is illegal. Court advised Mr. Whitmore that defense does not need to respond to any of Mr. Stevens filings unless otherwise directed to do so by the Court. Any filings from Mr. Stevens will be considered frivolous. Mr. Whitmore to prepare the Order and submit a copy to the Plaintiff along with a Request for Submission. Plaintiff is to have five (5) days, plus three (3) days for mailing to file an objection to the terms of the proposed Order.</p>
--	--