

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

AARON M. MORGAN, an individual,

Appellant,

vs.

DAVID E. LUJAN, an individual, and  
HARVEST MANAGEMENT SUB  
LLC, a foreign limited-liability  
company,

Respondents.

Case No.: 77753

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Appeal from the Eighth Judicial District  
Court, the Honorable Elizabeth Gonzalez  
Presiding

**RESPONSE TO HARVEST MANAGEMENT'S MOTION TO DISMISS and  
COUNTER-MOTION RENEWING REQUEST FOR REMAND AND STAY  
OF CURRENT DEADLINES**

**Marquis Aurbach Coffing**

Micah S. Echols, Esq.  
Nevada Bar No. 8437  
Kathleen A. Wilde, Esq.  
Nevada Bar No. 12522  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
mechols@maclaw.com  
kwilde@maclaw.com

**Richard Harris Law Firm**

Benjamin P. Cloward, Esq.  
Nevada Bar No. 11087  
Bryan A. Boyack, Esq.  
Nevada Bar No. 9980  
801 South Fourth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 444-4444  
Facsimile: (702) 444-4455  
Benjamin@RichardHarrisLaw.com  
Bryan@RichardHarrisLaw.com

*Attorneys for Appellant, Aaron M. Morgan*

MAC:15167-001 3823603\_2

## **I. INTRODUCTION**

Appellant, Aaron Morgan (“Morgan”), and Respondent, Harvest Management Sub LLC (“Harvest Management”), generally agree that more work needs to be done in the District Court before this Court addresses assignments of error and the merits of the parties’ positions. However, Morgan and Harvest Management disagree as to the correct procedural method by which to send this case back to the District Court for resolution of an outstanding issue. As explained in more detail below, Morgan respectfully submits that dismissal, especially with “instructions to enter judgment in favor of Harvest,”<sup>1</sup> is improper because the District Court should address the pending motions for entry of judgment in the first instance. And, given the District Court’s *Huneycutt*<sup>2</sup> certification, it is more proper to remand the case pursuant to *Huneycutt* / NRAP 12A for the necessary proceedings.

Since this remand issue needs to be resolved before the parties proceed to briefing in this Court, Morgan also asks the Court to stay the current deadlines to request transcripts, and prepare the opening brief and appendix, as outlined in this Court’s August 22, 2019 order.

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<sup>1</sup> See Renewed Motion to Dismiss Appeal at pages 1-2.

<sup>2</sup> *Huneycutt v. Huneycutt*, 94 Nev. 79, 80, 575 P.2d 585, 586 (1978).

## **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

Since 2015, Morgan has been in litigation against David Lujan (“Lujan”) and his employer, Harvest Management, which relates to a serious traffic accident. During the April 2018 jury trial, the District Court provided a jury verdict form which listed only Lujan as a defendant against whom the jury could award damages. So, after the jury found “Defendant” 100% at fault and awarded \$2,980,000, the Honorable Judge Gonzalez granted Morgan’s motion for entry of judgment as to only Lujan.

In doing so, Judge Gonzalez rejected Morgan’s argument that the Honorable Judge Bell should address any issues with the judgment because Judge Bell presided over the case from the beginning and through both of the trials. In addition, Judge Gonzalez explicitly refused to enter judgment for or against Harvest Management. Thus, the December 2018 decision effectively resolved all issues even though no formal judgment was entered regarding Harvest Management.

In an abundance of caution, Morgan filed a notice of appeal challenging Judge Gonzalez’s decision. This Court then issued a Notice of Referral to Settlement Program and Suspension of Rules and the Settlement Judge filed a report indicating that this case is appropriate for the NRAP 16 Settlement Program.

On January 23, 2019, Harvest Management filed its initial motion to dismiss Morgan's appeal as premature. Consistent with its normal practice, this Court denied the motion pending completion of the NRAP 16 settlement proceedings.

Meanwhile, after Morgan filed his notice of appeal, Harvest Management filed its own Motion for Entry of Judgment. Morgan timely opposed the motion and counter-moved to return the case to Judge Bell. Over Harvest Management's objection, the case was reassigned back to Judge Bell.

Following hearings regarding Harvest's Motion for Entry of Judgment and other post-trial matters, Judge Bell concluded that she lacked jurisdiction to hear non-collateral matters because of Morgan's pending appeal in this case. So, while Judge Bell agreed that the flawed verdict form necessitated further action, Judge Bell certified her intent to rule upon the motion in accordance with *Huneycutt*, 94 Nev. 79, 575 P.2d 585.

Morgan then filed a motion for a *Huneycutt* / NRAP 12A remand in this Court. After Harvest Management opposed the motion, this Court exercised its discretion to deny the motion.<sup>3</sup>

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<sup>3</sup> See Order Denying Motion for Remand dated July 31, 2019.

On August 13, 2019, Morgan and Harvest Management participated in a settlement conference with Settlement Judge Shirinian. Unfortunately, the parties did not reach a resolution.

After Mr. Shirinian filed a Settlement Program Status Report, Harvest Management filed a renewed motion to dismiss which asks this Court to dismiss the instant appeal *and* remand with instructions to enter judgment in favor of Harvest Management.

### **III. LEGAL ARGUMENT**

Morgan appreciates that judicial economy and efficiency are best served when relevant issues are fully resolved prior to appellate proceedings. In this case, Morgan respectfully submits that (A) the instant appeal is proper because the December 2018 order effectively resolved all the issues between the parties, and (B) a limited remand is the most effective way to address Harvest Management's motion for entry of judgment, as well as Judge Bell's intention to revisit Morgan's own motion for entry of judgment. Nevertheless, even if the Court decides that the instant appeal is premature, (C) the aggrieved party should have an opportunity to file a new appeal after Judge Bell rules on the pending motions for entry of judgment, and (D) this Court should not instruct the District Court on how to rule.

**A. THE DECEMBER 2018 ORDER EFFECTIVELY RESOLVED THE RIGHTS AND LIABILITIES BETWEEN THE PARTIES.**

Simply stated, the procedural posture in this case is bizarre. Although entry of judgment following the jury verdict should have been straight-forward, the anomaly with the verdict form combined with assignment to a different Department resulted in the error that has plagued this case for nearly a year. But, regardless of the cause, Judge Gonzalez's December 2018 decision addressed the liabilities of all parties. After all, while the Court did not enter judgment in Harvest Management's favor, its refusal to enter judgment *against* Harvest Management effectively circumvented the jury's intended verdict. The issues on appeal, thus, were fully teed up and ready for this Court's review when the order was entered. And, as such, Morgan sensibly filed a notice of appeal to preserve his appellate rights.

**B. A LIMITED REMAND IS THE BEST OPTION.**

This Court previously addressed the viability of a *Huneycutt* remand while the parties' were weeks away from a settlement conference. Although the Court certainly had discretion to deny Morgan's motion to remand for any reason – or even no particular reason – the potential for a settlement undercut the need for any further proceedings.

Now that the parties were unable to settle, Morgan respectfully renews his previous request for a remand because Judge Bell has already certified her intent to rule upon Harvest Management's motion for entry of judgment, and revisit Morgan's own motion for entry of judgment, if she has jurisdiction to do so. Because resolution of the motions is a narrow, defined issue, a limited remand would tie up loose ends without necessitating a whole new appellate proceeding. As such, a limited remand is the most effective way to address the procedural quandary in this case.

**C. MORGAN RESERVES HIS RIGHT TO RE-FILE HIS APPEAL IF THE INSTANT CASE IS PREMATURE.**

"A premature notice of appeal does not divest the district court of jurisdiction." NRAP 4(a)(6). So, if Harvest Management is correct that a final judgment has not actually been entered, it is sensible for this Court to dismiss the instant appeal for lack of jurisdiction. Of course, if a final judgment has been entered, Morgan does not consent to this appeal being dismissed and instead asks for a *Huneycutt* remand to resolve the outstanding verdict form issues.

It bears mentioning, however, that dismissal of a premature appeal is not a final adjudication. So, once Judge Bell enters judgment for or against Harvest Management in ruling upon the two outstanding motions, the aggrieved party should have the opportunity to file an appeal. And, while this Court technically

does not grant dismissals “without prejudice,” any such ruling in the instant case should not bar or otherwise affect a subsequent appeal.

**D. REMAND WITH ENTRY OF JUDGMENT IS DEFINITELY WRONG.**

As noted, Harvest Management’s legal arguments regarding premature appeals are not controversial, if this appeal is, in fact, premature. However, its motion to dismiss is improper to the extent it also asks this Court to “instruct the District Court to enter judgment in favor of Harvest.” There is no legal mechanism for this Court to rule upon the merits of an issue that must first be decided by the District Court, subject to this Court’s further review.

After all, “motions to dismiss must be determined without reference to the merits of the appeal or questions involving its merits.” *Sullivan v. Nev. Indus. Comm’n*, 54 Nev. 301, 14 P.2d 262, 263 (1932). So, even if the Court agrees that there has not been a final judgment as to Harvest Management, the Court should not reach the parties’ dispute as to whether judgment *should* be entered for or against Harvest Management. After all, “[a]n appellate court is not particularly well-suited to make factual determinations in the first instance.” *Ryan’s Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 279 P.3d 166, 172 (2012). And, given Judge Bell’s superior position to address what actually happened throughout the history of this case, including the trial, this Court should allow Judge Bell to



address the competing motions for entry of judgment in the first instance. *See, e.g., Winn v. Winn*, 86 Nev. 18, 20, 467 P.2d 601, 602 (1970) (“The trial judge’s perspective is much better than ours for we are confined to a cold, printed record.”); *Wittenberg v. Wittenberg*, 56 Nev. 442, 55 P.2d 619, 623 (1936) (“[M]uch must be left to the wisdom and experience of the presiding judge, who sees and hears the parties and their witnesses, scrutinizes their testimony and studies their demeanor.”). Therefore, the Court should reject Harvest Management’s legally unfounded request to have judgment entered in its favor.

#### **IV. CONCLUSION**

For the foregoing reasons, this Court should deny Harvest Management’s renewed motion to dismiss and exercise its discretion to order a limited remand pursuant to NRAP 12A and *Huneycutt*. Alternatively, even if this Court decides the instant appeal is premature, the aggrieved party should still have appeal rights following a decision by Judge Bell on the competing motions for entry of judgment. And, most importantly, this Court should not instruct the District Court to enter judgment in favor of Harvest Management because Judge Bell is in the best position to address the pending motions in the first instance.

Since this remand issue needs to be resolved before the parties proceed to briefing in this Court, Morgan also asks the Court to stay the current deadlines to

request transcripts, and prepare the opening brief and appendix, as outlined in this Court's August 22, 2019 order.

Dated this 26th day of August, 2019.

**Marquis Aurbach Coffing**

/s/ Micah S. Echols

Micah S. Echols, Esq.  
Nevada Bar No. 8437  
Kathleen A. Wilde, Esq.  
Nevada Bar No. 12522  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
mechols@maclaw.com  
kwilde@maclaw.com

**Richard Harris Law Firm**

/s/ Benjamin P. Cloward

Benjamin P. Cloward, Esq.  
Nevada Bar No. 11087  
Bryan A. Boyack, Esq.  
Nevada Bar No. 9980  
801 South Fourth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 444-4444  
Facsimile: (702) 444-4455  
Benjamin@RichardHarrisLaw.com  
Bryan@RichardHarrisLaw.com

*Attorneys for Appellant, Aaron M. Morgan*

## **CERTIFICATE OF SERVICE**

I hereby certify that this **RESPONSE TO HARVEST MANAGEMENT’S MOTION TO DISMISS and COUNTER-MOTION RENEWING REQUEST FOR REMAND AND STAY OF CURRENT DEADLINES** was filed electronically with the Nevada Supreme Court on the 26th day of August, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Douglas Gardner, Esq.  
Joshua Gilmore, Esq.  
Andrea Champion, Esq.  
Dennis Kennedy, Esq.  
Sarah Harmon, Esq.

/s/ Leah Dell

Leah Dell, an employee of  
Marquis Aurbach Coffing