

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CHERI RENE WIMAN,

Appellant,

vs.

COTY REFAELY,

Respondent

No. 82763

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
May 12 2021 11:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 29
County Clark Judge David M. Jones
District Ct. Case No. A-19-803928-C

2. Attorney filing this docketing statement:

Attorney S. Don Bennion, Esq. Telephone 702-333-0777
Firm Law Office of S. Don Bennion
Address 6980 O'Bannon Drive #400
Las Vegas, Nevada 89117

Client(s) Cheri Rene Wiman

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Michael S. Strange, Esq. Telephone 702-464-3042
Firm Michael S. Strange & Associates
Address 501 S. Rancho Drive Suite A-7
Las Vegas, Nevada 89106

Client(s) Coty Refaely

Attorney N/A Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>3-16-21 Order</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

NO

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

Plaintiff filed her Complaint in this matter on October 18, 2019. Defendant filed an Answer and Counterclaim on November 8, 2019. On February 7, 2020, the parties entered into a Settlement Agreement and General Release which provided Defendant a time-limited right to purchase two pieces of real property from the Plaintiff. On July 24, 2020, the parties entered into an Addendum to Settlement Agreement and General Release allowing the Defendant additional time until October 31, 2020, to purchase the properties from the Plaintiff. Defendant completed the purchase of one of the properties within the time specified by the Settlement Agreement and General Release but did not purchase the "Churchill" property as required by the subject agreements. As of the deadline to purchase the Churchill property October 31, 2020, the purchase did not occur, yet the District Court granted Defendant's Motion to Enforce the Settlement Agreement. This Appeal now was filed.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The primary bases of the appeal of the District Court's ruling concern two, claimed "unforeseeable" events, to wit: 1- "due to an unforeseeable event of a supposed 'lien' still remaining on the Churchill property which was mistaken and ultimately cleared, and the fact the deadline to purchase the real property fell on a holiday, there was a delay in performing the purchase of the real property . . . prior to October 31, 2020;" and 2- "Even though the Addendum had a 'time is of the essence clause' because of the unforeseeable event and the fact the deadline to complete the transfer fell on a holiday, there was no way to complete the purchase on that date and as such extended the deadline to complete the transfer until the next business day."

In fact, the next business day was November 2, 2020, not November 5, 2020. And these events were foreseeable.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None we are aware of.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

No

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Pursuant to the NRAP17(b), this matter would be assigned to the Court of Appeals because it does not appear to apply to the provisions of NRAP 17(a).

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

NO

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from March 16, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served March 16, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed April 9, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Pursuant to NRAP 3 A (b)(1), the March 16, 2021 Notice of Entry of Order Granting Defendant's Motion To Enforce Settlement Agreement, certified as a final order by the District Court May 12, 2021, provides Plaintiff/Appellant with requisite standing to appeal herein.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Cheri Rene Wiman

Defendant: Coty Refaely

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff/Appellant filed a Complaint for Declaratory Relief

Defendant/Respondent filed a Counterclaim for Breach of Contract.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Cheri Rene Wiman

Name of appellant

S. Don Bennion, Esq.

Name of counsel of record

May 12, 2021

Date


Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 12th day of May, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

X By Electronic Service

Dated this 12th day of May, 2021


Signature