

IN THE SUPREME COURT OF THE STATE OF NEVADA

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NONA TOBIN, an individual,

Appellant,

vs.

BRIAN CHIESI, an individual,
DEBORA CHIESI, an individual,
QUICKEN LOANS INC.; JOEL A.
STOKES, an individual, JOEL A.
STOKES and SANDRA F. STOKES, as
Trustees of the JIMIACK
IRREVOCABLE TRUST; JIMIACK
IRREVOCABLE TRUST; RED ROCK
FINANCIAL SERVICES; and
NATIONSTAR MORTGAGE, LLC

Respondents.

Electronically Filed
Oct 18 2021 05:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 82294

District Ct. No. A799890

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE SUSAN JOHNSON PRESIDING

**RESPONDENTS' REPLY IN SUPPORT OF JOINT MOTION TO STRIKE
APPENDIX TO EXCLUDE MATTERS OUTSIDE THE RECORD ON
APPEAL**

MEMORANDUM OF POINTS AND AUTHORITIES

Respondents, Brian Chiesi, Debora Chiesi, Quicken Loans Inc. (collectively with the Chiesis, “Chiesi Respondents”), Joel A. Stokes, individually, Joel A. Stokes and Sandra F. Stokes, as Trustees of the Jimijack Irrevocable Trust, Jimijack Irrevocable Trust; Red Rock Financial Services; and Nationstar Mortgage LLC, by and through their respective counsel of record, hereby file this Reply in Support of their Joint Motion to Strike those portions of Appellant’s Appendix that include matters outside the record of appeal.

I. ARGUMENT

It is a fundamental principle of appellate law that: “[a] point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.” Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (Nev. 1981). Accordingly, “[m]atters outside the record on appeal may not be considered by an appellate court.” Hooper v. State, 95 Nev. 924, 926, 604 P.2d 115, 116 (Nev. 1979); NRAP 10(a).

When a party to an appeal includes documents that are not part of the district court record, matters outside the record will be stricken. See Kelly v. Tahoe Regional Agency, 109 Nev. 638, n.18, 855 P.2d 1027, n.18 (Nev. 1993) citing Goldman v. Nevada Comm'n on Judicial Discipline, 108 Nev. 251, 272 n.20, 830 P.2d 107, 121 n.20 (Nev. 1992) (granting Respondent’s Motion to Strike to exclude

public records that were not filed with the district court); Grey v. Grey, 111 Nev. 388, 390 n.1, 892 P.2d 595, 597 (Nev. 1995).

Here, it is undisputed that Volumes 1-15, and Volume 16 items 1, 2, 3, 4, 5, 7, and 8 include filings that were not filed with the district court in Case No. A-19-799890-C, i.e., the district court case from which this Appeal arises. Rather, the filings were filed in a prior *separate action* (“Prior Case”), previously resolved by a prior appeal. See Tobin v. Stokes, 79295-COA, 2021 Nev. App. Unpub. LEXIS 199, 2021 WL 1401498 (Nev. App. Apr. 12, 2021) (unpublished Order affirming final district court judgment in the Prior Case).

Appellant’s Opposition to Respondents’ Joint Motion to Strike advances a tortured reading of NRAP 10(a), asserting in essence that **any** “papers and exhibits filed in the district court” (regardless of whether the papers or exhibits were filed in the district court case on appeal) are part of the “trial court record”. To the extent the Appellant wanted the district court in this action to consider the filings from the Prior Case, it was incumbent on the Appellant to ensure that the filings from the Prior Case were filed with the district court *in this action* to ensure the filings were: (1) actually considered by the district court so the arguments advanced in connection with the same would not be deemed waived on appeal; and (2) part of the district court record to ensure the filings would later become part of the record on appeal.

Of course, each filing from the Prior Case that *was filed* with the district court

in *this action* (i.e., those filings included in the Chiesi Respondents' Request for Judicial Notice and those exhibits attached to other parties' briefs in this action) should be included in the appendix for this appeal as those filings (unlike the filings which are the subject of the Motion to Strike) were both considered by the district court and part of the record on appeal; therefore, those records are properly before this Court on appeal. However, contrary to Appellant's assertion in its Opposition, that does not mean the filings from the Prior Action that were *not filed* with the district court in Case No. A-19-799890-C should be afforded the same treatment.

This Court should strike Volumes 1-15 and Volume 16 items 1, 2, 3, 4, 5, 7, and 8, as they include filings that are not part of the record on appeal.

Dated this 18th day of October 2021.

/s/Brittany Wood

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1)(B), I hereby certify that I am an employee of Maurice Wood, and that on the 18th day of October, 2021, I submitted **RESPONDENTS’ REPLY IN SUPPORT OF JOINT MOTION TO STRIKE APPENDIX TO EXCLUDE MATTERS OUTSIDE THE RECORD ON APPEAL** to the Supreme Court of Nevada’s electronic docket for filing and service upon the following:

/s/ Brittany Wood _____
An Employee of MAURICE WOOD