

IN THE SUPREME COURT OF THE STATE OF NEVADA

BERTRAM HAZELL,
Appellant,

vs.

COUNTY OF LYON, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA; LYON COUNTY SHERIFF,
SID SMITH, IN HIS OFFICIAL
CAPACITY; LYON COUNTY SHERIFF
DEPUTY, BRYAN R. VEIL, BOTH
INDIVIDUALLY AND AS AN
EMPLOYEE OF LYON COUNTY; LYON
COUNTY SHERIFF DEPUTY,
RICHARD WISE, BOTH
INDIVIDUALLY AND AS AN
EMPLOYEE OF LYON COUNTY; LYON
COUNTY SHERIFF DEPUTY,
CHRISTOPHER MILLER, BOTH
INDIVIDUALLY AND AS AN
EMPLOYEE OF LYON COUNTY; LYON
COUNTY SHERIFF DEPUTY, PETER
SPINUZZI, BOTH INDIVIDUALLY AND
AS AN EMPLOYEE OF LYON
COUNTY; LYON COUNTY SHERIFF
DEPUTY, SEAN CLANTON, BOTH
INDIVIDUALLY AND AS AN
EMPLOYEE OF LYON COUNTY; CITY
OF YERINGTON, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA; AND YERINGTON POLICE
DEPARTMENT, OFFICER DAVID
SMITH, BOTH INDIVIDUALLY AND
AS AN EMPLOYEE OF THE CITY OF
YERINGTON,
Respondents.

No. 51777

FILED

JUL 24 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

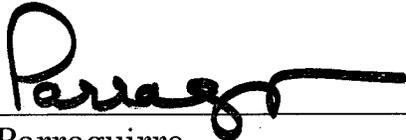
This is an appeal from a district court summary judgment in an action involving 42 U.S.C. § 1983 and state law tort claims. Third Judicial District Court, Lyon County; David A. Huff, Judge.

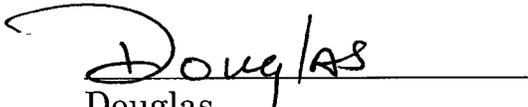
On appeal, appellant argues that the district court erred in granting summary judgment because appellant established genuine issues of material fact. Appellant has failed, however, to include his opposition to the motions for summary judgment in his appendix. As this court has previously held, “appellants are responsible for making an adequate appellate record” and “[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision.” Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). In Cuzze, the appellants failed to include, on appeal, their opposition to the summary judgment motion. Id. at 603-04, 172 P.3d at 135. This court concluded that without the opposition, certain other documents in the appendix had no context and this court could not affirmatively determine whether those documents had even been submitted to the district court with appellants’ opposition. Id. Based on this failure, the district court’s summary judgment was affirmed because it was “necessarily presume[d]” that the missing opposition presented insufficient evidence to avoid summary judgment. Id. at 604, 172 P.3d at 135.

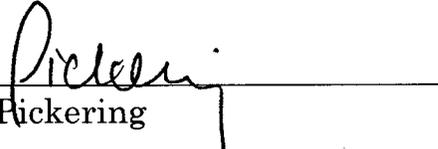
Similar to the situation in Cuzze, in this case appellant has provided several documents in his appendix that do not include a district court file stamp and he has failed to provide his opposition to the motions for summary judgment. Respondents noted this failure in their answering briefs, yet appellant failed to remedy this mistake; in fact, appellant did

not file a reply brief or appendix. Based on this failure, we must necessarily presume that appellant failed to present sufficient evidence to avoid summary judgment. Id. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Rickering

cc: Hon. David A. Huff, District Judge
Patrick O. King, Settlement Judge
Law Offices of John P. Schlegelmilch, Ltd.
Rands, South, Gardner & Hetey
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Lyon County Clerk