

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY MOSLEY,
Appellant,
vs.
DONALD MOSLEY,
Respondent.

No. 34731

FILED

MAR 27 2002

ORDER DISMISSING APPEAL

JANE TIE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

On November 5, 2001, appellant submitted an appendix to the opening brief, and a "Motion to Enlarge the Record (Appendix) Accompanying Appellant's Opening Brief." In that motion, appellant argues that this appeal "cannot . . . be supported with the limited record of the TPO hearing." Because of that, appellant requests that this court allow appellant's appendix to contain some documents that were not part of the record in the proceedings underlying this appeal. Appellant represents that "all" of the documents in the appendix "are official court documents in this and related matters involving the parties to this appeal." Appellant also states that if this court should "deny this motion, this appeal should be dismissed as moot, as appellant's case cannot otherwise be made."

On November 15, 2001, respondent filed an opposition to appellant's motion. In that opposition, respondent notes that this appeal concerns only the denial of a temporary protective order and that appellant is seeking to include in her appendix documents that were not part of the trial court record for that proceeding, including some documents "that have not been entered into any court proceeding."

The trial court record consists of "the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district

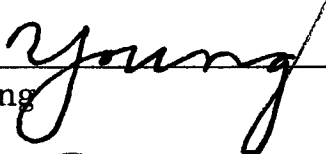
court minutes, and the docket entries made by the district court clerk." NRAP 10(a). The appellate court record consist of those portions of the trial court record that the parties include in the appendix to the briefs, as well as any relevant transcripts of the proceedings below. NRAP 10(b). Further, this court may not consider matters that are not properly included in the appellate court record. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981). By appellant's own representation, it is apparent that many of the documents she wishes to include in the appendix cannot be part of the appellate court record. Accordingly, we deny appellant's motion to enlarge the record. Because the appendix is "incorporated by reference into the body of the opening brief," the clerk of this court shall strike the opening brief filed on November 5, 2001, and return it along with the appendix and the errata that was received on November 20, 2001. Further, because we deny the motion to enlarge the record, we grant appellant's request that we therefore dismiss this appeal. Accordingly we hereby order this appeal dismissed.


On December 5, 2001, counsel for appellant, attorney Andrew S. Myers, filed a motion to withdraw as counsel of record. In an affidavit in support of that motion, Mr. Myers represents that "an actual conflict has arisen which makes it impossible for either me or this firm to represent Appellant." On December 17, 2001, appellant submitted a proper person opposition to Mr. Myers' motion to withdraw.¹ Although


¹ Although appellant has not been granted permission to file documents in proper person in this appeal, we direct the clerk of the court to file the December 17, 2001, opposition as we have considered it resolving the motion to withdraw as counsel.

appellant avers, in an affidavit in support of the opposition, that she wishes Mr. Myers to remain counsel of record, she does not dispute that there is an actual conflict as represented by Mr. Myers in his motion to withdraw. Cause appearing, and in light of this order dismissing this appeal, we grant Mr. Myers' motion to withdraw as counsel of record. See NRAP 46(d) and SCR 46. Additionally, we deny as moot Mr. Myers' February 19, 2002, motion to expedite consideration of his motion to withdraw and respondent's November 29, 2001, motion for an extension of time to file the answering brief.

It is so ORDERED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Mario G. Recanzone, Senior Judge
Myers & Spretnak
Carl E. Lovell Jr.
Terry Mosley
Clark County Clerk