

COPIES FILED

03 MAR 25 P4 17

HOWARD ...
C. Parsley

1 ROBERT W. LUECK, ESQ.
Nevada Bar No. 001489
2 528 So. Casino Center Dr. 311
Las Vegas, NV 89101
3 (702) 385-7385

4 JARIEN CHO, ESQ.
Nevada Bar No. 008401
5 619 S. Sixth Street
Las Vegas, NV 89101
6 (702) 386-8071

7
8 IN THE FAMILY DIVISION
IN THE SECOND JUDICIAL DISTRICT COURT FO THE STATE OF NEVDA
9 IN AND FOR THE COUNTY OF WASHOE

10 ANDREW EARL FURER,
Plaintiff,

CASE NO. DV04-01626
DEPT. NO. 11

11 vs.

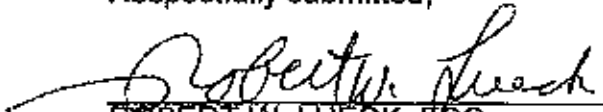
12 ELOISA BESADA FURER,
13 Defendant.
14

15
16 **MOTION FOR STAY PENDING APPEAL**

17 The defendant respectfully moves the court pursuant to NRCPC 62(d) for an order
18 staying the payment of attorney fees to attorney Gloria Petroni and Pecos Law Group
19 (Dawn Throne) during the pendency of the appeal of the attorneys fees judgments to
20 the Nevada Supreme Court. This motion is based upon the attached points and
21 authorities.

22 Dated this 20 day of March, 2008.

Respectfully submitted,



ROBERT W. LUECK, ESQ.
Nevada Bar No. 001489
528 S. Casino Center #311
Las Vegas, NV 89101
(702) 385-7385

1 POINTS AND AUTHORITIES

2 As the court has correctly noted in its various orders and the decree of divorce,
3 this has been a contentious divorce. It is also true that the defendant has had multiple
4 attorneys in her divorce case from 2004 through the present.

5 At the end of this case, the court also awarded attorneys fees to various prior
6 counsel for the defendant. Gloria Petroni was awarded \$130, 493.02 and Dawn
7 Throne (Pecos Law Group) was awarded \$105,882.51.

8 The defendant has decided to appeal the awards of attorney fees to these two
9 attorneys to the Nevada Supreme Court. It is her right to do so and notices of appeal
10 have been timely filed for that purpose.

11 That having been done, the next step is the defendant's Motion for Stay Pending
12 Appeal. This is governed by NRCPC 62(d):

13 **Stay Upon Appeal.** When an appeal is taken the appellant by giving a
14 supersedeas bond may obtain a stay subject to the exceptions contained in
15 subdivision (a) of this rule. The bond may be given at or after the time of filing
16 the notice of appeal. The stay is effective when the supersedeas bond is filed.

17 Although the rule refers to a supersedeas bond, the Nevada Supreme Court has
18 long held that the courts have the inherent power to provide for collateral other than a
19 supersedeas bond to secure a judgment. The latest law on this subject is Nelson v.
20 Heer, 121 Nev. 852 (2005). This counsel is the attorney who prevailed on a motion to
21 the Nevada Supreme Court to change the law on this point. This case opinion is
22 attached to this motion. (Exhibit 1)

23 The defendant owns 570,000 shares of stock in Washington Mutual and even
24 with its huge downturn in value, the stock is still worth at least \$10.00 per share. The
25 defendant proposes to segregate 50,000 shares of her stock via a court order to Credit
26

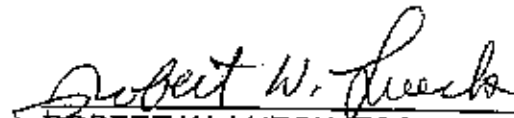
1 Suisse Securities USA as collateral to secure the judgments for these attorney fee
2 awards. This is roughly double the amount of the attorney fee awards and provides
3 more than enough collateral to secure these judgments including interest which will
4 accrue during the appeal.
5

6 In appellate work, once the appealing party fully secures the judgment, that party
7 has a right to the appeal. The merits of an appeal are not part of the decision making
8 process at this point. The defendant thus will have her appeal as a matter of right.
9

10 A copy of the latest stock quotation for WaMu stock as of the close of trading on
11 Thursday, March 20, 2008 is attached as Exhibit 2.

12 Dated this 20 day of March, 2008.

13 Respectfully submitted,

14 

15 ROBERT W. LUECK, ESQ.
16 Nevada Bar No. 001489
17 528 S. Casino Center #311
18 Las Vegas, NV 89101
19 (702) 385-7385
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF FACSIMILE AND MAILING**

2 I hereby certify that on the 20 day of March, 2008, I served a copy
3 of the Motion for Stay Pending Appeal by facsimile and by depositing the same in the
4 U.S. mail at Las Vegas, Nevada, first-class mail, postage thereon being fully prepaid,
5 addressed as follows:
6

7
8 Vincent Mayo, Esq.
9 PECOS LAW GROUP
10 8925 South Pecos Road, Suite 14B
11 Henderson, Nevada 89074

12 Dawn Throne, Esq.
13 64 N. Pecos Road, Ste. 2100
14 Henderson, Nevada 89074

15 Gloria M. Petroni, Esq.
16 BELDING, HARRIS & PETRONI, LTD.
17 417 West Plumb Lane
18 Reno, Nevada 89509

19 Shawn B. Meador, Esq.
20 WOODBURN AND WEDGE
21 6100 Neil Road, Suite 500
22 Post Office Box 2311
23 Reno, Nevada 89505

24 Kent R. Robison, Esq.
25 ROBISON, BELAUSTEGUI, SHARP & LOW
26 71 Washington Street
27 Reno, Nevada 89503
28



NANCY HAZIM
An Employee of Robert W. Lueck, Esq.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA
AFFIRMATION
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding:

MOTION FOR STAY PENDING APPEAL

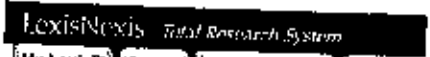
filed in or submitted for District Court Case number: DV04-01626

Does not contain the social security number of any person.

Robert W. Lueck
ROBERT W. LUECK, ESQ.
Attorney for Eloisa Furer

3/20/08
Date

EXHIBIT 1



My Lexis Search Research Tasks Get a Document Shepard's Alerts Total Litigator Transactional Advisor Counsel Selector
Source: Legal > States Legal - U.S. > Nevada > Find Cases > NV Cases, Administrative Decisions & Attorney General Opinions, Combined
Terms: Judy Nelson and date[00q (01/01/2005) and leq (12/31/2005)] (Edit Search | Suggest Terms for My Search)

122 P.3d 1252, *; 2005 Nev. LEXIS 97, **;
121 Nev. Adv. Rep. 81

View Available Briefs and Other Documents Related to this Case

JUDY NELSON, Appellant, vs. SCOTT HEER, Respondent.

No. 45571

SUPREME COURT OF NEVADA

122 P.3d 1252; 2005 Nev. LEXIS 97; 121 Nev. Adv. Rep. 81

December 1, 2005, Decided

SUBSEQUENT HISTORY: [*1] As Corrected January 25, 2006
Judgment entered by Nelson v. Heer, 2007 Nev. LEXIS 95 (2007)

PRIOR HISTORY: [**1] Motion for stay pending appeal supported by alternate security in lieu of a supersedeas bond.

DISPOSITION: Motion denied.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff, a buyer of a cabin, discovered it had a preexisting broken water pipe which caused severe mold damage. Plaintiff sued defendant, the seller, and obtained a large judgment against defendant. The Nevada District Court granted a stay pending appeal and rejected defendant's request to use of alternate security, in lieu of a supersedeas bond. Defendant then filed a motion in the state supreme court in relation to the supersedeas bond issue.

OVERVIEW: The record showed defendant had difficulty obtaining a supersedeas bond. Further, plaintiff promptly obtained a judgment lien on all of her real property, and he began to execute on the judgment by garnishing her slot route operator income. According to defendant, the garnishment threatened the viability of her businesses, primarily two small bars, for which she had several employees. She asserted that without said income, she would have been unable to pay other creditors and certain mortgages. The Nevada Supreme Court denied defendant's motion, noting the district court was in the best position to weigh the relevant considerations in determining whether "alternate security" was warranted. However, the supreme court did clarify its prior opinion of McCulloch v. Jenkins which allowed for alternate security (other than a supersedeas bond), only in "unusual circumstances." As to when a full supersedeas bond could be waived and/or alternate security substituted, the supreme court adopted a five factor analysis set forth by the United States Seventh Circuit Court in Dillon v. City of Chicago. In general, those factors were applied with respect to the unique circumstances of each case.

OUTCOME: Defendant's motion was denied.

CORE TERMS: alternate, supersedeas bond, stay pending appeal, unusual circumstances, posting, conditioned, parcel, cabin, temporary, judgment debtor, real property, asking, judgment creditor, financial burden, restrictive, judgment lien, status quo, route, slot

LEXISNEXIS® HEADNOTES

Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview
Civil Procedure > Appeals
HN1 See Nev. R. Civ. P. 62(d).

Hide


Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview
Civil Procedure > Appeals > General Overview
Governments > Courts > Rule Application & Interpretation

HN2 Nev. R. Civ. P. 62(d) is substantially based on its federal counterpart, Fed. R. Civ. P. 62(d). Most federal courts interpreting the rule generally recognize that Fed. R. Civ. P. 62(d) allows an appealing party to obtain a stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment amount, but that trial courts retain the inherent power to grant a stay in the absence of a full bond. The Nevada Supreme Court has previously recognized that federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when it examines its rules. More Like This Headnote | Shepardize: Restrict By Headnote

Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview
Governments > Courts > Rule Application & Interpretation


HN3 Pursuant to the Nevada Supreme Court's decision in McCulloch v. Jenkins, a supersedeas bond posted under Nev. R. Civ. P. 62 should usually be set in an amount that will permit full satisfaction of the judgment. But a district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist and so warrant. More Like This Headnote

Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview 

Governments > Courts > Rule Application & Interpretation 

HNS Unusual circumstances to allow for a supersedeas bond in an amount that is less than that required for a full satisfaction of a judgment may include: (1) when the judgment debtor objectively demonstrates a present financial ability to readily respond to a money judgment and presents to the court a financially secure plan for maintaining that same degree of solvency during the period of an appeal; (2) when the judgment debtor's financial condition is such that the posting of a full bond will impose an undue financial burden; (3) when a full bond will impose an undue financial burden and the debtor's financial dealings can be restrained to provide alternate security; (4) when execution on the judgment will render the debtor insolvent and eliminate the debtor as the creditor's competitor, and alternate security could be provided; (5) when posting the bond is "not practicable," such as when the judgment amount is extremely large, and (6) when a stay will do the judgment creditor "no material damage" or no likelihood of harm from a stay is shown. In the context of the McCulloch standard, as to when "unusual circumstances exist and so warrant," there is an implication that alternate security should be permitted only in rare instances. [More Like This Headnote](#)

Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview 

Governments > Courts > Rule Application & Interpretation 

HNS In the context of allowing for a reduced supersedeas bond, the phrase "unusual circumstances" in *McCulloch v. Jenkins* is too restrictive. The Nevada Supreme Court concludes that a more flexible and modern approach will better serve Nevada litigants and courts. [More Like This Headnote](#)

Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview 

Civil Procedure > Appeals

HNS The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay. However, a supersedeas bond should not be the judgment debtor's sole remedy, particularly where other appropriate, reliable alternatives exist. Thus, the focus is properly on what security will maintain the status quo and protect the judgment creditor pending an appeal, not how "unusual" the circumstances of a given case may be. [More Like This Headnote](#)

Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview 

Civil Procedure > Appeals

Governments > Courts > Rule Application & Interpretation 

HNS The United States Seventh Circuit Court of Appeals sets forth five factors to consider in determining when a full supersedeas bond may be waived and/or alternate security substituted: (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond will be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position. The Nevada Supreme Court concludes that this framework provides a useful analytical tool, and the supreme court adopts it for Nevada. Therefore, when confronted with a motion to reduce the bond amount or for alternate security, the district court should apply the aforementioned factors. In considering the second factor, the district court should take into account the length of time that the case is likely to remain on appeal. [More Like This Headnote](#)

Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview 

Civil Procedure > Appeals

HNS Nev. R. App. P. 8(a) requires that an application for a stay pending appeal be made to the district court in the first instance. This requirement is grounded in the district court's vastly greater familiarity with the facts and circumstances of the particular case. Additionally, the district court is better positioned to resolve any factual disputes concerning the adequacy of any proposed security, while this court is ill suited to such a task. [More Like This Headnote](#)

Available Briefs and Other Documents Related to this Case:

NV Supreme Court Brief(s)

NV Supreme Court Brief(s)

COUNSEL: Robert W. Luck, Las Vegas, for Appellant.

Sylvester & Polednak, Ltd., and Shawn A. Mangano, Las Vegas, for Respondent.

JUDGES: BEFORE MAUPIN, GIBBONS and HARDESTY, JJ. MAUPIN and GIBBONS, JJ., concur.

OPINION BY: HARDESTY

OPINION

[*1252] By the Court, HARDESTY, J.:

Although we deny appellant's stay motion, we take this opportunity to modify our previous opinion in *McCulloch v. Jenkins* concerning the use of alternate security. In lieu of a supersedeas bond, to support a stay pending appeal. After entering judgment on a jury verdict for approximately \$ 330,000, the district court granted a stay pending appeal, conditioned on the posting of a supersedeas bond in the judgment amount. Appellant Judy Nelson moves this court for a stay pending appeal conditioned on alternate security, rather than a supersedeas bond. On September 21, 2005, we granted a temporary stay and indicated that an opinion setting forth our reasoning would follow. In this opinion, we retreat from *McCulloch's* emphasis on "unusual circumstances" and instead adopt the Seventh Circuit test for when alternate [*1252] security may be appropriate.

FOOTNOTES

¹ 99 Nev. 122, 659 P.2d 302 (1983).

² *Id.*, at 123, 659 P.2d at 303.

FACTS

After purchasing a cabin on Mount Charleston from Nelson, respondent Scott Heer discovered that a water pipe had broken in the cabin before he bought it. He had tests conducted and then claimed that the cabin was contaminated with mold. Nelson had not lived in the cabin and denied liability. A jury found in Heer's favor, and the district court entered judgment against Nelson for approximately \$ 330,000 in damages, costs, attorney fees and prejudgment interest. The district court granted a stay pending appeal but conditioned the stay on the posting of a supersedeas bond in the judgment amount. [*1253] The district court rejected Nelson's request to provide security other than a bond by encumbering a parcel of her real property. Nelson claimed that the equity in the property exceeded the judgment amount.

Nelson assertedly had difficulty obtaining a supersedeas bond. Heer promptly [**3] obtained a judgment lien on all of Nelson's real property in Clark County, a total of six parcels (not including Nelson's homesteaded residence), by recording the judgment in his favor. Also, Heer began to execute on the judgment by garnishing Nelson's slot route operator income. According to Nelson, the garnishment threatens the viability of her businesses. Specifically, Nelson owns two small bars, and she asserts that the slot route income pays a significant portion of the bars' expenses, including employees' salaries, inventory and supplies. Additionally, Nelson claims, the bars' income stream supports Nelson and her family. Nelson states that without this income, not only will several employees be out of work, but she will be unable to pay her other creditors and the mortgages on her real property. Nelson therefore filed the instant motion, asking that a stay pending appeal be conditioned on alternate security, rather than a supersedeas bond. ³

FOOTNOTES

³ Initially, Nelson asked to encumber one of her six parcels of real property in Clark County. We denied this motion in an unpublished order. Nelson then filed this "amended" motion asking that Heer's judgment lien serve as security for a stay. Since we granted the temporary stay, Nelson filed yet another motion asking that funds held by Nevada Title Company serve as security.

[**4] DISCUSSION

NRCP 62(d) governs stays pending appeal and provides:

NRCP 62(d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is filed.

⁴ This rule is substantially based on its federal counterpart, FRCP 62(d). Most federal courts interpreting the rule generally recognize that FRCP 62(d) allows an appellant to obtain a stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment amount, but that courts retain the inherent power to grant a stay in the absence of a full bond. ⁴ We have previously recognized that federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules. ⁵

FOOTNOTES

⁴ See, for example, *Fed. Presc. Serv. v. Am. Pharm. Ass'n*, 205 U.S. App. D.C. 47, 636 F.2d 755, 757-58 (D.C. Cir. 1980), and the cases cited therein. To the extent that *State ex rel. PSC v. District Court*, 94 Nev. 42, 44-46, 574 P.2d 222, 223-74 (1978) implies otherwise, it is disavowed. PSC's requirement that the State or a state agency file a motion for stay pending appeal is not in any way affected by this opinion, however. *Id.*, at 45-46, 574 P.2d at 279. [**5]

⁵ *Executive Mgmt. v. Titor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

Our primary opinion discussing security for a stay is *McCulloch v. Jenkins*. * In *McCulloch*, we adopted what was then the majority federal approach and held that ⁶ "a supersedeas bond posted under NRCP 62 should usually be set in an amount that will permit full satisfaction of the judgment. [But a] district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist and so warrant." ⁷

FOOTNOTES

⁶ 99 Nev. 122, 659 P.2d 302.

⁷ *Id.*, at 123, 659 P.2d at 303 (footnote omitted). The cases cited in *McCulloch* as support for the language quoted in the text indicate that ⁸ "unusual" circumstances could include: (1) when the judgment debtor "objectively demonstrates a present financial ability to readily respond to a money judgment and presents to the court a financially secure plan for maintaining that same degree of solvency during the period of an appeal," *Paplar Grove, Etc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979); (2) when the judgment debtor's "financial condition is such that the posting of a full bond would impose an undue financial burden," *id.*; (3) when a full bond would impose an undue financial burden and the debtor's financial dealings can be restrained to provide alternate security, *Fed. Presc. Serv.*, 636 F.2d at 756 (citing *Paplar Grove*, 600 F.2d at 1191); (4) when execution on the judgment would render the debtor insolvent and eliminate the debtor as the creditor's competitor, and alternate

security could be provided, *id.* (citing *C. Albert Sauter Co. v. Richard S. Sauter Co.*, 368 F. Supp. 501, 520-21 (E.D. Pa. 1973)); (5) when posting the bond is "not practicable," such as when the judgment amount is extremely large, *id.* (citing *Trans World Airlines, Inc. v. Hughes*, 314 F. Supp. 94 (S.D.N.Y. 1970), *aff'd in part*, 515 F.2d 173, 177-78 (2d Cir. 1975)); and (6) when a stay will do the judgment creditor "no material damage" or no likelihood of harm from a stay has been shown, *id.*, at 759 (quoting *Urban v. Knapp Brothers Manufacturing Company*, 217 F.2d 810, 816 (6th Cir. 1954) and citing *International Controls Corp. v. Vesco*, 490 F.2d 1334, 1335 (2d Cir. 1974)). These examples illustrate that *McCulloch's* standard may not be as restrictive as Nelson claims. On the other hand, the opinion's emphasis on "when unusual circumstances exist and so warrant" implies that alternate security should be permitted only in rare instances.

[6]** **[*1254]** Nelson argues that^{MNS7} the phrase "unusual circumstances" in *McCulloch* is too restrictive. According to her, this language is outdated and few, if any courts still use such a rigid standard. We agree with Nelson and conclude that a more flexible and modern approach will better serve Nevada litigants and courts.

^{MNS7} The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay. ⁶ However, a supersedeas bond should not be the judgment debtor's sole remedy, particularly where other appropriate, reliable alternatives exist. Thus, the focus is properly on what security will maintain the status quo and protect the judgment creditor pending an appeal, not how "unusual" the circumstances of a given case may be.

FOOTNOTES

⁶ See *McCulloch*, 99 Nev. at 123, 659 P.2d at 303; see also *Fed. Pres. Serv.*, 636 F.2d at 756; *Papier Grove*, 600 F.2d at 1190-91; *Employers Ins. Co. v. American Liberty Ins.*, 495 So. 2d 1039, 1041 (Ala. 1986); *Bruce Church, Inc. v. Superior Court*, 160 Ariz. 514, 774 P.2d 818, 821 (Ariz. Ct. App. 1989); *Ryder Truck Rental, Inc. v. Sutton*, 305 Ark. 374, 807 S.W.2d 909, 912 (Ark. 1991); *Muck v. Arapahoe County Dist. Court*, 814 P.2d 869, 872-73 (Colo. 1991); *Seventh Elect. Church in Israel v. Rogers*, 34 Wn. App. 105, 660 P.2d 280, 289 (Wash. Ct. App. 1983). See generally 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2905, at 522 (1995); 5 Am. Jur. 2d *Appellate Review* § 441, at 181-82 (1993).

[7]** In reflecting on the purposes of security for a stay, ^{MNS7} the Seventh Circuit, in *Dillon v. City of Chicago*, ⁹ set forth five factors to consider in determining when a full supersedeas bond may be waived and/or alternate security substituted:

- (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position. ¹⁰

We conclude that this framework provides a useful analytical tool, and we adopt it for Nevada. Therefore, when confronted with a motion to reduce the bond amount or for alternate security, the district court should apply these factors. In considering the second factor, the district court should take into account the length of time that the case is likely to remain on appeal.

FOOTNOTES

⁹ 866 F.2d 902 (7th Cir. 1988). **[**8]**

¹⁰ *Id.*, at 904-05 (citations and internal quotation marks omitted).

Here, the district court's order denying Nelson's motion for alternate security contains no discussion. Thus, we cannot determine what standard the district court used. Also, Nelson's motion to the district court proposed alternate security in the form of only one of her several parcels, which was encumbered by a first deed of trust. Thus, the district court has not had the opportunity to consider Nelson's more recent proposals, which have been presented only to this court.

^{MNS7} **NRAP** 8(a) requires that an application for a stay pending appeal be made to the district court in the first instance. This requirement is grounded in the district court's vastly greater familiarity with the facts and circumstances of the particular case. Additionally, the district court is better positioned to resolve any factual disputes concerning the adequacy of any proposed security, while this court is ill suited to such a task. ¹¹

FOOTNOTES

¹¹ See *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 501, 604, 637 P.2d 534, 536 (1981).

[9]** Accordingly, we deny Nelson's motion, as the district court is in the best position to weigh the relevant considerations in determining whether alternate security is warranted. Nelson may, however, renew her **[*1255]** motion for alternate security in lieu of a bond to the district court, which should consider her request under the principles discussed in this opinion. ¹²

FOOTNOTES

¹² We deny Heer's September 28, 2005 motion for reconsideration of our temporary stay and for sanctions, and we also deny Nelson's October 11, 2005 motion for clarification and for contempt. We further deny Nelson's October 17, 2005 motion for approval of security as moot in light of this opinion. We vacate our temporary stay entered on September 21, 2005.

Quote

Quote

Quote

MAUPIN and GIBBONS, JJ., concur.







Source: Legal > States Legal - U.S. > Nevada > Find Cases > NV Cases, Administrative Decisions & Attorney General Opinions, Combined

Terms: Judy Nelson and date(gcc (01/01/2008) and loq (12/31/2005)) (Edit Search | Suggest Terms for My Search)

View: Full

Date/Time: Tuesday, March 18, 2008 - 4:37 PM EDT

* Signal Legend:

-  - Warning: Negative treatment is indicated
 -  - Questioned: Validity questioned by citing refs
 -  - Caution: Possible negative treatment
 -  - Positive treatment is indicated
 -  - Citing Refs. With Analysis Available
 -  - Citation Information available
- * Click on any Shepard's signal to Shepardize® that case.

My Lexis™ | Search | Research Tasks | Get a Document | Shepard's® | Alerts | Total Litigator | Transactional Advisor | Counsel Selector
History | Delivery Manager | Decoder | Switch Client | Preferences | Sign Out | Help



About LexisNexis | Terms & Conditions | Contact Us
Copyright © 2008 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

EXHIBIT 2

Stock Quote

Washington Mutual Inc WM (NYSE)

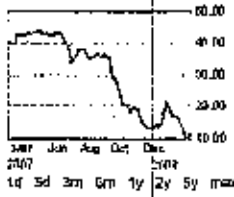
Sector: Financial Industry: SRI: Savings Banks View WM on other exchanges

As of 3:01 PM EST Price Change Percent Change

\$11.70 USD **-1.87** **-19.02%**

Independent Research Broker Research

Previous Close	\$9.83	Volume	72.1M
Open	\$10.05	Avg Volume	81.5M
Day High	\$11.60	Mkt Cap.	\$10.20B
Day Low	\$9.83	Shares Out	868.7M
52-Week High	\$44.80	EPS (TTM)	\$-.21
52-Week Low	\$8.72	Div & Yield	0.00 (5.13%)
Beta	0.81	Ex Div Date	07/25/08



MODE = MEMORY TRANSMISSION

START=MAR-20 16:50

END=MAR-20 17:15

FILE NO.=144

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/EMAIL ADDRESS/TELEPHONE NO.	PAGES	DURATION
001	OK	B	17756883088	054/054	00:14:07

-RobertLueck

***** DP-8020E ***** -7023853225

- ***** -

2181- *****

ROBERT W. LUECK, LTD.
 Attorney and Counselor at Law
 528 S. Casino Center Blvd.
 Suite 311
 Las Vegas, Nevada 89101

Telephone (702) 385-SETL (7385) FAX (702) 385-3225

FACSIMILE

FAX TO: Shawn Meador, Esq.

FAX NUMBER: 775-688-3088

No. of pages including fax cover page:

FROM: Robert W. Lueck, Esq.

DATE: March 20, 2008

CASE: Furer v. Furer

Notes: See attached Notice of Appeal, Notice of Filing of Cost on Appeal Bond ; Case Appeal Statement, Motion for Stay Pending Hearing On Defendant's Motion to Alter or Amend Findings and Motion for Stay Pending appeal

- HARD COPY WILL BE MAILED**
- HARD COPY WILL NOT BE MAILED**

Notice: the materials sent by this fax are intended to be confidential and for the intended recipient only.

MODE = BATCH TRANSMISSION

START=MAR-20 16:52

END=MAR-20 17:13

FILE NO.=145

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/EMAIL ADDRESS/TELEPHONE NO.	PAGES	DURATION
001	B-OK	Δ	17753297169	038/039	BATCH

-RobertLueck

***** DP-8020E ***** -7023853225 - ***** - 2181- *****

ROBERT W. LUECK, LTD.
 Attorney and Counselor at Law
 528 S. Casino Center Blvd.
 Suite 311
 Las Vegas, Nevada 89101

Telephone (702) 385-SETL (7385) FAX (702) 385-3225

FACSIMILE

FAX TO: Kent Robison, Esq.

FAX NUMBER: 775-329-7169

No. of pages including fax cover page:

FROM: Robert W. Lueck, Esq.

DATE: March 20, 2008

CASE: Furer v. Furer

Notes: See attached Notice of Appeal, Notice of Filing of Cost on Appeal Bond ; Case Appeal Statement, Motion for Stay Pending Hearing On Defendant's Motion to Alter or Amend Findings and Motion for Stay Pending appeal

- HARD COPY WILL BE MAILED
- HARD COPY WILL NOT BE MAILED

Notice: the materials sent by this fax are intended to be confidential and for the intended recipient only.

MODE = BATCH TRANSMISSION

START=MAR-20 16:55

END=MAR-20 17:13

FILE NO.=146

STN NO.	COMM.	ONE-TOUCH/ ABER NO.	STATION NAME/EMAIL ADDRESS/TELEPHONE NO.	PAGES	DURATION
001	B-OK	a	17753297169	014/014	BATCH

-RobertLueck

***** DP-8020E ***** -7023853225 - ***** 2181- *****

Search - 1 Result - Judy Nelson

Page 4 of 5

security could be provided, *id.* (citing *C. Albert Senter Co. v. Richard S. Seaver Co.*, 368 F. Supp. 501, 520-21 (E.D. Pa. 1973)); (5) when posting the bond is "not practicable," such as when the judgment amount is extremely large, *id.* (citing *Tracy-Ward Airlines, Inc. v. Hughes*, 314 F. Supp. 94 (S.D.N.Y. 1970), *aff'd in part, part*, 515 F.2d 173, 177-78 (2d Cir. 1975)); and (6) when a stay will (in the judgment creditor's view) "do material damage" or "no likelihood of harm from a stay has been shown," *id.* at 759 (quoting *Wain v. Knapp Brothers Manufacturing Company*, 237 F.2d 810, 816 (6th Cir. 1954) and citing *International Contract Corp. v. Westco*, 490 F.2d 1034, 1036 (2d Cir. 1974)). These examples illustrate that McCulloch's standard may not be as restrictive as *Wain* claims. On the other hand, the opinion's emphasis on "when unusual circumstances exist and as warranted" implies that alternate security should be permitted only in rare instances.

[**6] [**1254] Nelson argues that the phrase "unusual circumstances" in *McCulloch* is too restrictive. According to her, the language is outdated and few, if any courts still use such a rigid standard. We agree with Nelson and conclude that a more flexible and modern approach will better serve Nevada litigants and courts.

The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay. However, a supersedeas bond should not be the judgment debtor's sole remedy, particularly where other appropriate, reliable alternatives exist. Thus, the focus is properly on what security will maintain the status quo and protect the judgment creditor pending an appeal, not how "unusual" the circumstances of a given case may be.

FOOTNOTES

¹ See *McCulloch*, 98 Nev. at 123, 659 P.2d at 103; see also Fed. Proc. Supp. § 36 F.2d at 756; *Poplar Grove*, 600 F.2d at 1100-9; *Employers Ins. Co. v. American Liberty Ins.*, 495 So. 2d 1030, 1031 (Ala. 1986); *Spate Church, Inc. v. Superior Court*, 150 Ark. 514, 734 P.2d 818, 821 (Ark. Ct. App. 1986); *Ryder Truck Rental, Inc. v. Superior Court*, 345 Ark. 374, 807 S.W.2d 908, 912 (Ark. 1991); *Huck v. Arambao Crumb Diet. Court*, 814 P.2d 869, 872-73 (Colo. 1991); *Seventh Eled Church of Christ v. Rogers*, 39 W.Va. App. 185, 660 P.2d 280, 288 (Wash. Ct. App. 1993). See generally 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2905, at § 21 (1995); 5 Am. Jur. 2d *Appellate Review* § 91, at 181-82 (1993).

[**7] In reflecting on the purposes of security for a stay, the Seventh Circuit, in *DWQ v. City of Chicago*, set forth five factors to consider in determining when a full supersedeas bond may be waived and/or alternate security substituted:

- (1) the complexity of the collection process;
- (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
- (3) the degree of confidence that the district court has in the availability of funds to pay the judgment;
- (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and
- (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would also other creditors of the defendant in an insolvency proceeding.

We conclude that this framework provides a useful analytical tool, and we adopt it for Nevada. Therefore, when confronted with a motion to reduce the bond amount or for alternate security, the district court should apply these factors. In considering the second factor, the district court should take into account the length of time that the case is likely to remain on appeal.

FOOTNOTES

¹ 866 F.2d 902 (9th Cir. 1986). [**8]

² *Id.* at 904-05 (citations and internal quotation marks omitted).

Here, the district court's order denying Nelson's motion for alternate security contains no discussion. Thus, we cannot determine what standard the district court used. Also, Nelson's motion to the district court proposed alternate security in the form of only one of her several parcels, which was encumbered by a first deed of trust. Thus, the district court has not had the opportunity to consider Nelson's more recent proposals, which have been presented only to this court.

FRAP 8(a) requires that an application for a stay pending appeal be made to the district court in the first instance. This requirement is grounded in the district court's vastly greater familiarity with the facts and circumstances of the particular case. Additionally, the district court is better positioned to resolve any factual disputes concerning the adequacy of any proposed security, while this court is ill suited to such a task.

FOOTNOTES

¹ See *Rogers v. Esh*, 97 Nev. 501, 604, 637 P.2d 529, 536 (1981).

[**9] Accordingly, we deny Nelson's motion, as the district court is in the best position to weigh the relevant considerations in determining whether alternate security is warranted. Nelson may, however, renew her [**1255] motion for alternate security in lieu of a bond to the district court, which should consider her request under the principles discussed in this opinion.

FOOTNOTES

¹ We deny Keer's September 28, 2005 motion for reconsideration of our temporary stay and for sanctions, and we also deny Nelson's October 11, 2005 motion for clarification and for contempt. We further deny Nelson's October 17, 2005 motion for approval of security as moot in light of this opinion. We vacate our temporary stay entered on September 23, 2005.

ROBERT W. LUECK, LTD.
Attorney and Counselor at Law
528 S. Casino Center Blvd.
Suite 311
Las Vegas, Nevada 89101

Telephone (702) 385-SETL (7385) FAX (702) 385-3225

FACSIMILE

FAX TO: Gloria Petroni, Esq.
FAX NUMBER: 775-786-7764
No. of pages including fax cover page:
FROM: Robert W. Lueck, Esq.
DATE: March 20, 2008
CASE: Furer v. Furer
Notes: See attached Motion for Stay Pending Appeal

- HARD COPY WILL BE MAILED
- HARD COPY WILL NOT BE MAILED

Notice: the materials sent by this fax are intended to be confidential and for the intended recipient only.

***** DP-8020E ***** -7023853225
-ROBERTLUECK - ***** - 2181-*****
001 OK 17757867764 014/014 00:02:55
STN COMM. ONE-TOUCH/ STATION NAME/EMAIL ADDRESS/TELEPHONE NO. PAGES DURATION
FILE NO.=148
MODE = MEMORY TRANSMISSION
START=MAR-20 17:38 END=MAR-20 17:41
*****-COMM. JOURNAL-***** DATE MAR-20-2008 ***** TIME 17:41 *****

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

ANDREW EARL FURER

vs.

ELOISA BESADA FURER

FAMILY COURT MOTION/OPPPOSITION NOTICE (REQUIRED)
CASE NO. DV04-01626
DEPT. NO. 11

NOTICE: THIS MOTION/OPPPOSITION NOTICE MUST BE ATTACHED AS THE LAST PAGE to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A. Mark the CORRECT ANSWER with an X.		YES	NO
1. Has a final decree or custody order been entered in this case? If yes, then continue to Question 2. If no, you do not need to answer any other questions.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Is this a motion or an opposition to a motion filed to change a final order? If yes, then continue to Question 3. If no, you do not need to answer any other questions.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Is this a motion or an opposition to a motion filed only to change the amount of child support?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Is this a motion or an opposition to a motion for reconsideration or a new trial and the motion was filed within 10 days of the Judge's Order?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
IF the answer to Question 4 is YES, write in the filing date found on the front page of the Judge's Order.		Date	
B. If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are exempt from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will not be decided until the \$25.00 fee is paid.			

I affirm that the answers provided on this Notice are true.

Date: 3-21, 2008

Signature:

Robert W. Lueck

Print Name:

ROBERT W. LUECK, ESQ.

Print Address:

528 So. Casino Center, #311

Telephone Number:

Las Vegas, NV 89101

702-385-7385