Appendix One

1. Utah Supreme Court Denial October 10, 2023
2. COA Order July 23, 2023
3. January 19, 2023 Costs Order Appellant won on appeal
4. June 13th, 2023 Order
5. MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS ON APPEAL DUE TO APPELLANT'S MISCONDUCT
6. REPLY TO MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS ON APPEAL DUE TO APPELLANT'S MISCONDUCT
7. HMS' REPLY IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS ON APPEAL DUE TO APPELLANT'S MISCONDUCT

The Order of the Court is stated below:

Dated: October 10, 2023
/s/ John A. Pearce 10:23:58 AM Justice

IN THE SUPREME COURT OF THE STATE OF UTAH

----ooOoo----

HOWELL MANAGEMENT SERVICES, LLC,
Respondent, v.
APARNA VASHISHT-ROTA,
Petitioner.
ORDER

Supreme Court No. 20230656-SC
Court of Appeals No. 20230532-CA
Trial Court No. 170100325

----ooOoo----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on July 31, 2023.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of Order - Signature at the Top of the First Page

HOWELL MANAGEMENT SERVICES, LLC,
Respondent, v.
APARNA VASHISHT-ROTA,
Petitioner.
ORDER
Court of Appeals No. 20230532-CA
Trial Court No. 170100325

IN THE UTAH COURT OF APPEALS

Aparna Vashisht Rota appeals from the district courts June 13, 2023 Memorandum Decision and Order. This matter is before the court on its own motion for summary disposition based upon lack of jurisdiction due to the absence of a final, appealable order.

This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order. See *Loffredo v. Holt*, 2001 UT 97, ¶¶ 10, 15, 37 P.3d 1070. An order is final only if it disposes of the case as to all parties and finally disposes of the subject matter of the litigation on the merits of the case. *Bradbury v. Valencia*, 2000 UT 50, ¶ 9, 5 P.3d 649 (cleaned up).

The order appealed from is not a final, appealable order because it did not dispose of all issues in the litigation. Specifically, the June 13, 2023 order released a supersedeas bond concerning

costs incurred during an interlocutory appeal. While liability has been established, the district court has not yet resolved the issue of Howell Management Services, LLC's damages. Accordingly, there is no final, appealable order. Thus, this court lacks jurisdiction to hear the appeal and must dismiss it.[1] See *Loffredo*, 2001 UT 97, ¶ 11.

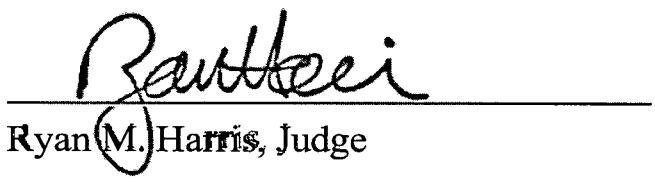
[1] On July 11, 2023, in Case No. 20230500 CA, this court issued an order designating Vashisht Rota as a vexatious litigant. The order required her to be represented by counsel in any proceeding before this court in which she is a party. Here, Vashisht Rota filed her response to the motion for summary disposition before the vexatious litigant order was issued. Accordingly, we accepted her response to the motion.

IT IS HEREBY ORDERED that the appeal is dismissed without prejudice to the filing of a timely appeal after the district court enters a final, appealable order.

Dated this _28th_ day of July, 2023. FOR THE COURT:

_____ Ryan M. Harris, Judge

FOR THE COURT:



Ryan M. Harris, Judge

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2023, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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FIRST DISTRICT, LOGAN DEPT ATTN: JANET REESE
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By Hannah Hunter
Hannah Hunter

By _____ Hannah Hunter
Judicial Assistant
Case No. 20230532-CA
FIRST DISTRICT, LOGAN DEPT, 170100325

IN THE UTAH COURT OF APPEALS

AUGUST EDUCATION GROUP, LLC, AND

APARNA VASHISHTROTA

Appellants,

v. Case No. 20200713-CA

HOWELL MANAGEMENT SERVICES, LLC,

Appellee.

Before Judges Christiansen Forster, Tenney, and Appleby

This matter is before the court on Appellee's motion for attorney fees and costs.

IT IS HEREBY ORDERED that the Appellee's motion for attorney fees and costs is denied.

DATED this 19th day of January, 2023.

FOR THE COURT:

Kate Appleby

Kate Appleby, Judge1

1. Senior Judge Kate Appleby, sat by special assignment as authorized by law. See generally Utah R. Jud. Admin. 11-201(7).

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2023, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

Aparna Vashisht Rota aps.rota@gmail.com

AUGUST EDUCATION GROUP, LLC UT

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Case No. 20200713

District Court No. 170100325

THE FIRST JUDICIAL DISTRICT COURT IN AND FOR CACHE COUNTY, STATE OF UTAH	
HOWELL MANAGEMENT SERVICES, a Utah Limited Liability Company;, Plaintiff, vs. AUGUST EDUCATION GROUP LLC, a California limited liability company; and APARNA VASHISHT ROTA, an individual;, Defendants.	**MEMORANDUM DECISI ORDER** Case No. 170100325 Judge Spencer D. Walsh

THIS MATTER IS BEFORE THE COURT on the Plaintiffs Bill of Costs. In preparation of this Decision, the Court has reviewed the moving papers and examined the applicable legal authorities. Having considered the foregoing, the Court issues this Decision.

SUMMARY

On February 14, 2023, the Plaintiff, Howell Management Services, filed its Bill of Costs [D.E. 610], its Memorandum in Support of Bill of Costs [D.E. 609], and the Declaration of Jeffrey W. Shields and Verification of Bill

of Costs [D.E. 611]. Plaintiff filed a Request to Submit on February 22, 2023.

RELEVANT FACTS

I. Defendants August Education Group, LLC and Apama Vashisht Rota ("Rota") (collectively "Defendants") filed a petition for interlocutory appeal [D.E. 515] with the Utah Court of Appeals for review of this Court's Memorandum Decision on Amended Motion for Issuance of an Order to Show Cause Re: Contempt of Protective Order ("Sanctions Order") And its Memorandum Decision denying Defendant's motion to amend the gag order ("Amendment Order"), both entered on September 2, 2020. The petition was granted. [D.E. 537]

2. The Utah Court of Appeal granted Defendants a stay of this action in the district court on the condition that Defendants pay a supersedeas bond in the amount of $21,701 to effectuate the stay [D.E. 571].

3. Defendants deposited the supersedeas bond in the

amount of $21,701 with this Court on February 22, 2021 [D.E. 575].

4. On appeal, the Utah Court of Appeals affirmed the Sanctions Order and Amendment Order by dismissing Defendants' interlocutory appeal based on Rota's frequent misconduct, refusal to follow the rules of procedure, and inclusion of entirely inappropriate material and arguments during the appeal [D.E. 600].
5. On November 9, 2022, Defendants filed a Petition for a Writ of Certiorari with the Utah Supreme Court. The Petition was denied [D.E. 604].
6. On February 6, 2023, the Utah Court of Appeals filed a Notice of Remittitur with the trial court [D.E. 607].
7. On February 14, 2023, the Plaintiff, Howell Management Services, filed its Bill of Costs [D.E. 610], its Memorandum in Support of Bill of Costs [D.E. 609], and the Declaration of Jeffrey W. Shields and Verification of Bill of Costs [D.E. 611].

LEGAL STANDARD

Utah Rule of Appellate Procedure 34 provides that "if an appeal is dismissed costs must be awarded for the appellee..." Utah R. App. P. 34(a)(l). The Rule further provides that "premiums paid for supersedeas or cost bonds to preserve rights pending appeal" may be awarded. Utah R. App. P. 34(c)(3). A "party claiming costs must, within 14 days after the remittitur is filed with the trial court clerk, serve on the adverse party and file with the trial court clerk an itemized and verified bill of costs." Utah R. App. P. 34(d).

ANALYSIS

I. Pursuant to Rule 34 of the Utah Rules of Appellate Procedure, Plaintiff is entitled to the release of the supersedeas bond, in the amount of $21,701.

Where Defendants' appeal was dismissed, costs must be awarded to the Plaintiff who was the appellee. *See* Utah R. App. P. 34(a)(l). Rule 34 allows the district court to award to Plaintiff the premiums paid by Defendants for supersedeas or costs bonds to preserve rights pending appeal. *See* Utah

R. App. P. 34(c)(3). Plaintiff has claimed these costs, and within 14 days after the remittitur Plaintiff filed with the trial court of clerk and served on the Defendants an itemized and verified bill of costs. Upon reviewing the itemization and description of costs set forth on page 3 of Plaintiff's Memorandum in Support of Bill of Costs as well as the information contained in the Declaration of Jeffrey W. Shields, the Court finds good cause to award to Plaintiffs the $21,70 1 deposited by Defendants as a supersedeas bond.

CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED that the $21,701 deposited by Defendants as a supersedeas Bond on February 22, 2021 be released to Plaintiff pursuant to Utah R. App. P. 34. This decision represents the order of the Court. No further order is necessary to effectuate this decision.

DATED this 13th day of June, 2023.

BY THE COURT:

Spencer D. Walsh

CERTIFICATE OF NO

I certify that a co
sent to the following people for case 170100325 by the

method and on the date specified.

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06/13/2023/s/ BRITA ZIZUMBO

Date:

Signature

06-13-2023 02:16 PM

Page 1 of 1

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Attorneys for Appellee

IN THE UTAH COURT OF APPEALS

August Education Group LLC, and Aparna Vashisht Rota,

Appellants, v.

Howell Management Services, LLC, Appellee.

MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS ON APPEAL DUE TO APPELLANT'S MISCONDUCT

Case No. 20200713-CA

Pursuant to this Court's inherent authority, as well as Rules 24, 33, and 40 of the Utah Rules of Appellate Procedure, Appellee Howell Management Services, LLC ("HMS" or "Appellee") hereby submits this Motion seeking an award of attorneys' fees and costs incurred on appeal due to the misconduct of

Appellant Aparna Vashisht-Rota, which resulted in dismissal of this appeal.

PRECISE RELIEF SOUGHT

HMS respectfully requests that this Court determine that HMS is entitled to an award of its attorneys' fees and costs incurred in this appeal, based on the misconduct of Appellant Aparna Vashisht-Rota, and remand to the district court for determination of the amount of fees and costs and entry of a money judgment for the amount of the award. This Court dismissed the Appellants' appeal because of Aparna Vashisht Rota's ("Rota") misconduct during the appeal.

When this Court dismissed Rota's appeal, it did so without addressing an outstanding question—HMS's request for an award of attorneys' fees. HMS had requested, in its briefing, an award of attorneys' fees due to Rota's misconduct. And during the hearing on Rota's misconduct, the Court indicated it was open to an award of fees. But when the Court issued its order dismissing the appeal, the order did not address the question of attorneys' fees. HMS thus anticipated the Court would issue an order to show cause why attorneys' fees should not be awarded, pursuant to Utah Rule of Appellate Procedure 33(c)(2). But the Court has not. And in the meantime, Rota's misconduct has continued. HMS contacted the Court's clerk's office for guidance on how to proceed, as it did not appear that the appellate rules governing petitions for rehearing provided a viable avenue for asking this Court to amend its order to address the issue of fees. As a result, HMS files this motion for fees, explaining the oversight with respect to the attorney fee issues and asking that the Court award fees and costs due to Rota's misconduct.

This Court has inherent authority to award attorneys' fees and costs as a sanction, and the Utah Rules of Appellate Procedure also allow an appellate court to award attorneys' fees and costs to a prevailing party where there has been misconduct by one of the parties. *See* Utah R. App. P. 24(i), 33(a), and 40(c). An award of attorneys' fees and costs is warranted here for the reasons discussed below.

STATEMENT OF RELEVANT FACTS

1. On September 2, 2020, the district court struck Appellants' answer and counterclaim as a sanction for Rota's "open and blatant disregard for the Court's mandates" and bad faith actions in violating a protective order. *See* Case No. 170100325, Docket No. 493, Memorandum Decision on Amended Motion for Issuance of an Order to Show Cause Re: Contempt of Protective Order ("Sanction Order") at 19.

2. Rota appealed the Sanctions Order with a petition for interlocutory appeal and this Court granted the petition. *See* Docket, Case No. 202000713-CA.

3. In its principal brief on appeal, HMS asked this Court to dismiss the appeal and to award attorney fees and double costs due to Rota's "pattern of egregious conduct." *See 3/11/22 Brief of Appellee Howell Management Services, LLC*, at pp. 48, 49–50. The inclusion of this request for attorney fees and costs followed this Court's order dated March 4, 2021 on HMS's *Motion to Dismiss Appeal Based on Plaintiff's Misconduct*, in which the Court directed that "Howell Management should include any request to dismiss this appeal as a sanction for misconduct in its Responsive

Brief "including all requests for attorneys' fees...."" *Id.*, Ex G.

4. On October 3, 2022, this Court issued its Order to Show Cause to the Appellant to show cause why this appeal should not be dismissed, and the Court held a hearing on the OSC on October 18, 2022. During the hearing, counsel for HMS concluded its argument with a request for an award of attorneys' fees, and the Court stated that it would consider it.

5. On November 1, 2022, this Court entered an order on its Order to Show Cause ("November 2022 Order") dismissing Rota's interlocutory appeal because of Rota's frequent and

extreme misconduct including salacious emails to this Court and an unmitigated stream of inappropriate filings during the appeal.

6. Specifically, this Court found that "Rota, acting pro se despite the fact that she was represented by counsel, repeatedly filed inappropriate materials, including emails, motions, and a reply brief, with burdensome, irrelevant, immaterial, or scandalous content." November 2022 Order at 1.

7. A small sampling of these inappropriate filings, as set forth in the November 2022 Order, are as follows:

a. A letter and a 296-page document titled "Brief for the October 18, 2022 Meeting to Show Cause." According to the Court of Appeals, only 19 pages are somewhat substantive.

b. A document captioned "Motion to Clarify September 13, 2022 Order," which contains a 4-page motion and around 100 pages of attachments. Most of the attachments were not related to the case.

c. A "Motion to Change Venue," which was 392 pages long and accused Judge Fonnesbeck of "extreme prejudice and hatred towards minorities."

d. A 2-page letter with 31 pages of attachments, followed by 94 pages of supplemental exhibits. One of these exhibits accuses the Utah judiciary of racism, misogyny, and other biases.

e. A document titled "Appellant's Motion [for] Proposed Orders." This motion is 291 pages long and was not requested by the court. It was followed by a 212-page filing, and another 223-page filing. *Id.* at 2–5.

8. In addition, Rota sent the Court of Appeals "a series of emails" with language that "attack[ed] the integrity of [the] court and some of the other judges who have been involved" in the case. *Id.* at 5.

9. Even after the Court of Appeals told the parties that "this court, and its staff, will not consider any further filings from either party not provided by rule on the subjects of these hearings except by invitation of the Court," Rota ignored the court's order and "continue[d] to flood the court with her inappropriate filings." *Id.* As can be seen from the docket in this case, even after entry of the November 2022 Order, Rota continued to make further filings without "invitation of the Court."

10. However, the November 2022 Order did not address HMS's request for an award of attorneys' fees and costs.

ARGUMENT

I. This Court Has Inherent Authority to Sanction the Conduct of Parties Before It.

This Court has inherent authority to sanction the conduct of parties before it, including by awarding attorneys' fees and costs to other parties to the appeal. *See, e.g., Goggin v. Goggin,* 2013 UT 16, ¶¶ 35–36, 299 P. 3d 1079 ("Thus, a court's authority to impose an award of attorneys' fees as a sanction against a party who has been obstructive or contemptuous is derived from several statutes and common law doctrines."). Here, the Court has ample grounds, which it cited in the November 2022 Order, to exercise this inherent authority and find that HMS is entitled to an award of its attorneys' fees and costs incurred in defending against this misconduct.

II. HMS is Entitled to Attorneys' Fees Under Rule 24(i).

Under Rule 24(i), if the Court "strike[s] or disregard[s] a brief that contains burdensome, irrelevant, immaterial, or scandalous matters," the Court may also assess "an appropriate sanction including attorney fees for the violation." Utah R. App. P. 24(i). Rota has filed numerous papers in this appeal that contain burdensome, irrelevant, immaterial, or scandalous matters. As this Court noted in dismissing the case, Rota's filings were "extraordinarily voluminous" and contained "inappropriate materials, including emails,

motions, and a reply brief, with burdensome, irrelevant, immaterial, or scandalous content." November 2022 Order at 1. This inappropriate conduct has been ongoing for many weeks and is not just of recent vintage. As such, HMS should be entitled to attorneys' fees pursuant to Rule 24(i). Regarding the language of Rule 24(i) referring to "a brief," this Court, in its November 22 Order, did not limit the misconduct it considered strictly to the briefing in the case but appropriately considered Rota's motions, supplements, withdrawals, massive exhibits and other filings outside of the briefing as well as Rota's demeaning and harassing emails directed toward the Court. For that reason, an entitlement to attorneys' fees under Rule 24(j) should allow for fees incurred by HMS dealing with all filings, including those made outside of the briefing itself. In any event, Rules 33(a) and 40(c) cited below allow for an award of sanctions for general misconduct.

III. HMS is Entitled to Attorneys' Fees Under Rule 33(a).

Under Rule 33, the Court may "award just damages, which may include single or double costs . . . and/or reasonable attorney fees to the prevailing party" if the Court determines that "a motion made or appeal taken under [the Rules of Appellate Procedure] is either frivolous or for delay." Utah R. App. P. 33(a). Rule 33 defines a frivolous appeal or motion to be "one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law." Utah R. App. P. 33(b). Many of Rota's abusive filings identified by the Court were motions not grounded in fact, but more to the point, an "appeal, motion, brief, or other document interposed for

the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other document." *Id.*

The Utah Court of Appeals has previously found that where an "appeal is not simply meritless but part of a long-standing pattern of abusive and obstructive conduct," attorneys' fees under Rule 33(a) are warranted. *Ross v. Short*, 2018 UT App 178, ¶ 29, 436 P.3d 318 (internal quotation marks omitted); *see also Tronson v. Eagar*, 2019 UT App 212, ¶ 40, 457 P.3d 407 (same). In *Ross*, the Court stated its reasons for awarding attorneys' fees and costs as follows: The never-ending and duplicative filings in this case, including the filing of seven separate appeals, appear designed to make this litigation prohibitively expensive. And we cannot escape the conclusion that this particular appeal is an effort by [the Appellant] to gain time while he avoids paying the sanctions ordered by the district court. *Ross*, 2019 UT App 212, ¶ 29. Similarly here, Rota filed never-ending and duplicative filings that were frivolous and made with the intention to delay. This Court dismissed Rota's appeal for this very reason. *See* November 2022 Order. This appeal has delayed HMS's right to relief, increased the cost of litigation, and resulted in unwarranted harassment from Rota's endless emails and baseless accusations. HMS and this Court have spent considerable time and expense sifting through hundreds of pages of filings and emails in this litigation and other related litigation. As such, HMS should be entitled to attorneys' fees and double costs related to this appeal under Rule 33(a).

IV. HMS is Entitled to Attorneys' Fees and Costs Under Rule 40(c).

A court may "sanction" a "person" for "conduct unbecoming . . . a person allowed to appear before the court, or for the failure to comply with these rules or order of the court." Utah R. App. P. 40(c). Rota is a "person" who is permitted as a *pro se* party to submit requests related to this appeal. Rota has continuously engaged in "unbecoming" behavior during this appeal. As noted in the November 2022 Order, Rota has "deluge[d] the court with inappropriate filings that are antagonistic, conclusory, repetitive, and at times barely comprehensible." November 2022 Order at 6. Rota has also "accused this court, the Utah judiciary as a whole, and individual judges of deliberate delay, corruption, bias, racism, and misogyny. *Id.* Rota also refused to comply with this Court's orders and the Rules of Appellate Procedure during the appeal. Pursuant to Rule 40(c), HMS requests that the Court award HMS its attorneys' fees and costs associated with this appeal as an additional sanction against Rota.

HMS thus seeks an award of all attorneys' fees and costs incurred in this appeal due to Rota's misconduct. Specifically, HMS seeks an award of all attorneys' fees incurred on appeal from April 11, 2022, when Rota filed a reply brief *pro se* despite having counsel of record at the time, up to and including the filing of this motion for attorneys' fees. This would include efforts necessitated in reviewing and, when necessary, responding to the numerous emails Rota sent to the Court, as well as the preparation for and participation in the hearing on the Order to Show Cause, and all other efforts required by counsel in this matter in addressing issues on appeal following the filing of Appellants' reply.

As this Court is aware from its thorough examination of both the filings in this case as well as the torrent of demeaning emails sent to the Court, the misconduct leading up to issuance of the Order to Show Cause was ongoing for many weeks before this Court rightfully had had enough and issued the Order to Show Cause. During this time HMS's counsel needed to at least skim all of the inbound items from Rota, at considerable expense, to ensure that any responses were timely filed and to avoid any argument of waiver. Rota's conduct is so egregious as to result in the dismissal of her appeal. The burdens of dealing with Rota's misconduct were not, however, limited only to the Court, but were also born by HMS, whose counsel was obligated to respond to it. Moreover, the conduct is so egregious as to merit an award of attorney's fees and costs as a sanction.

CONCLUSION

Based upon the foregoing, HMS respectfully requests that the Court order, pursuant to the Court's inherent authority as well as Rules 24(i), 33(a) and 40(c), that HMS is entitled to double costs and all attorneys' fees incurred by HMS's counsel with respect to this appeal, beginning on the date of Rota's filing of the Reply Brief, April 11, 2022. HMS further requests that the matter also be remanded to the district court for a determination of the amounts of fees and costs to be awarded and entry of a monetary judgment in accordance therewith.

DATED this 28th day of December 2022.
RAY QUINNEY & NEBEKER P.C.

/s/ *Jeffrey W. Shields* Jeffrey W. Shields Kennedy D. Nate *Attorneys for Appellees*

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December 2022, I caused to be deposited a true and correct copy of the foregoing **MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS ON APPEAL DUE TO APPELLANT'S MISCONDUCT** in the United States Mail at Salt Lake City, Utah, by first-class mail, postage prepaid, and addressed to the following:

Aparna Vashisht-Rota

Pro Se Litigant
12396 Dormouse Road

San Diego, CA 92129

In addition, I caused to be emailed a true and correct copy of the foregoing document to the email address provided by the Appellant in this matter, which is Aps.Rota@gmail.com.

/s/ Tamara Zimmerman

Dr. Aparna Vashisht-Rota
12396 Dormouse Road,
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IN THE UTAH COURT OF APPEALS
Case No.: 20200713-CA

August Education Group LLC, and Aparna Vashisht Rota,

Appellants,
v.
Howell Management Services, LLC,

REPY TO MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS ON APPEAL DUE TO APPELLANT'S MISCONDUCT

Judge: Hon. Judge Fonnesbeck

INTRODUCTION

The Court has no authority in this case as the Court loses jurisdiction upon filing on an appeal. Therefore, on those grounds, this motion should be denied. Furthermore, the motion makes additional erroneous statements.

HMS has filed to establish a lack of good faith of her filings that arose due to HMS' nonrecord exhibits allowed as of June 7, 2022. Instead, Defendants argue that they are entitled to attorneys' fees because

Plaintiffs motion (s) is frivolous. However, the Court must not conflate merit with good faith because "the mere fact that [a motion] is meritless does not necessarily means that the [motion] is also brought in bad faith." *See Rocky Ford Irrigation Co.*, 2020 UT 47,178 (quotation marks and citation omitted).

Finally, attorney's fees are only granted by statute or contract. Neither of those confer an award of attorneys' fees upon HMS. As such, there is no ruling on the merits of the interlocutory appeal either and procedural defaults are disfavored by public policy.

As well, It is unlikely that a one-year delay would be enough to waive the exhaustion requirement, but a two-year delay might be. See *Harris v. Champion*, 15 F.3d 1538, 1556 (10th Cir. 1994) (determining that a "delay in adjudicating a direct criminal appeal beyond two years from the filing of the notice of appeal gives rise to a presumption that the state appellate process is ineffective"); *Calhoun v. Farley*, 913 F. Supp. 1218, 1221 (N.D. Ind. 1995) (holding that sufficient time had passed to excuse the need for exhausting state remedies where no action had been taken by the state or by the incarcerated person for almost two years on his petition for post-conviction relief); *Geames v. Henderson*, 725 F. Supp. 681, 685 (E.D.N.Y. 1989) (finding that a delay of three and a half years is excessive when the "[c]ourt views the issues on appeal as no more complex than in most criminal appeals").

Of course, the Court of appeals reviews matters much more complex than a simple contract dispute.

REBUTTAL TO STATEMENT OF "RELEVANT FACTS"

1. *Disputed.* The Protective Order is unclear. It conflicts with itself. There is no violation of the order as the documents were disclosed to the author in a confidential setting; Appellant did not have and does not have access to any documents marked ATTORNEYS EYES only. The AAA sanctions are already litigated. The documents in question have a ruling from the arbitrator and as such HMS is estopped from presenting that again.
2. *Undisputed.* Two years have passed since rulings on the merits of the appeal and three years since pending motions in170100325.
3. *Undisputed.* Judge Hagan had already set grounds for a 'sanction' at the outset of the appeal and the judges followed suit waiting for nearly 2 years to do nothing.
4. *Disputed.* As per Appellant's understanding, the hearing was to determine what to do with nonrecord items and that the June 7th Order is inapplicable to Appellant. This is because it allows nonrecord materials from HMS from 20210395-CA. If the April 14th, 2022 motion to strike is granted as it was on April 29, 2022, then Appellant has won.
5. *Disputed.* The filings are made based on the nonrecord items allowed from HMS that were pro se so Appellant had to then redefend herself. Most of the motions mentioned are from 20210395-CA in which she made First Amendment comments related to public officials permitted under the law. Furthermore, this is not an issue on appeal or briefed and U.R.A.P. 11

prohibits items not in the record to be a part of the appeal. Rule 11. The record on appeal. (a) Composition of the record on appeal. The record on appeal consists of the documents and exhibits filed in or considered by the trial court, including the presentence report in criminal matters, and the transcript of proceedings, if any. "In all events, papers not filed with the district court or admitted into evidence by that court are not part of the clerk's record and cannot be part of the record on appeal." *Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074,1077 (9th Cir. 1988) (citing *United States v. Walker*, 601 F.2d 1051, 1054–55 (9th Cir.1979) and *Panaview Door & Window Co. v. Reynolds Metals Co.*, 255 F.2d 920, 922 (9th Cir.1958)). Furthermore, judicial proceeding privileges apply to all comments as Appellant is a litigant.

6. *Disputed.* Appellees filed nonrecord items from pro se case 20210395-CA in which she was trying all the motions, which her counsel had nothing to do with so she had to file.

7. Disputed.

a. Collateral estoppel: 20210395-CA

b. Orders not clear, issue preserved on appeal that the order is not clear has case law supporting her win.

c. Collateral estoppel: 20210395-CA

d. Collateral estoppel: 20210395-CA

e. The Court can disregard these but they all encompass 20210395-CA due to Appellees' nonrecord exhibits allowed.

8. *Disputed.* Pro se litigants insult the judiciary as they don't understand all the rules. This is not idea but Appellant is not alone. One litigant called the Dallas Courts a 'criminal enterprise[i]', the attacks on Supreme Court of the United States' integrity are abundant. First Amendment permits such criticism. Over decades, this Court has recognized steadfast First Amendment principles protecting expression from the state's coercive power. These include the rights to speak out on matters of public concern, criticize public officials See, e.g., *Thornhill v. State of Alabama*, 310 U.S. 88, 101 (1940); *Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46, 50–51 (1988). See, e.g., *New York Times Co. v. Sullivan*, 376 U.S. 254, 270– 71 (1964); *Bridges v. State of California*, 314 U.S. 252, 270 (1941). and parody public figures. *Hustler,* 485 U.S. at 56–57 (1988); see also *Campbell v. Acuff- Rose Music, Inc.,* 510 U.S. 569, 583 (1994). They also include the freedom to refuse uttering something one does not believe. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). And the Court has cemented clear First Amendment protection for lawfully gathering news and publishing it without prior restraint. *Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001); *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971). The judicial proceeding privilege has three elements. First, the alleged defamatory statement must have been made during or in the course of a judicial proceeding. Second, the statement must have some reference to the proceeding's subject matter. Third, the party claiming the privilege must have been acting in the capacity of a judge, juror, witness, litigant, or

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counsel in the proceeding at the time of the alleged defamation." *O'Connor*, 2007 UT at ¶ 31. These rights are "fundamental" under the First Amendment of the United States Constitution and the Constitution of the State of California. (Art. I, § 2, 3.) [3] In California, the right to petition for § redress of grievances protects attempts to obtain redress through all three branches of government. (*City of Long Beach v. Bozek* (1982) 31 Cal. 3d 527, 533-534, fn. 4 [183 Cal. Rptr. 86, 645 P.2d 137], vacated and remanded on issue of independent state grounds in459 U.S. 1095 [74 L.Ed.2d 943, 103 S.Ct. 712], and affirmed on state constitutional grounds in (1983) 33 Cal.3d 727 [190 Cal. Rptr. 918, 661 P.2d 1072].) [1b] Silvey's past conduct has consisted of admittedly persistent attempts to bring alleged facts about Smith's mobile home Park to the attention of various governmental agencies. Smith's petition placed in issue Silvey's motives. The California Supreme Court in *City of Long Beach v. Bozek*, supra, 31 Cal. 3d at pages 532- 533 indicated that a proper motive in bringing such action is irrelevant. As exasperating as Silvey's conduct must have been to Smith, Silvey was constitutionally protected in exercising his right of petition to administrative agencies, or the executive branch of government, irrespective of the considerations that prompted his actions. His filing of the mandamus action against the board of supervisors was likewise an exercise of this same right to petition the judicial branch of the government. Such activity cannot be classified as a harassing "course of conduct" within the definition of section 527.6, subdivision (b). The second portion of the trial court's order prohibiting *Silvey* from "contacting" any of the residents of the mobile home Park is also infirm as [149 Cal. App. 3d 407] unconstitutionally overbroad, because its vague wording appears to prohibit lawful as well as unlawful activity.

That is, it could be interpreted to prohibit not only physically or verbally threatening "contact," but also constitutionally protected speech. (See In re Berry (1968) 68 Cal. 2d 137, 155 [65 Cal. Rptr. 273, 437 P.2d 273]; *California Retail Liquor Dealers Institute v. United Farm Workers* (1976) 57 Cal. App. 3d 606, 610 [129 Cal. Rptr. 407], citing *United Farm Workers Organizing Committee v. Superior Court* (1971) 4 Cal. 3d 556, 570 [94 Cal. Rptr. 263, 483 P.2d 1215].

9. *Disputed.* Appellant assumed that was post Show Cause and there was no filing restriction post that hearing.

10. *Disputed.* HMS has not won.

ARGUMENT

Disputed. HMS has not won. The Court of Appeals has no jurisdiction. It took Appellant 25 minutes at the rate of $1,590/hour attached to prepare this response. *Disputed.* The Court should use this rule to strike motions it does not need but those arose due to HMS' nonrecord items.

Disputed. Appellants are owed money under contract and statute. Appellant requests damages from the Show Cause Motion as $3 million/year in lost trade as a founder. She seeks an award of attorneys' fees in Utah as it the post-contractual post-employment §34- 51-301 for independent contractors in Utah are unenforceable. § 34-51-201 post- employment restrictive covenants. (1) Except as provided in Subsection (2) and in addition to any requirements imposed under common law, for a post-employment may not enter into a post-employment restrictive covenant for a period of more than one year

from the day on which the employee is no longer employed by the employer. A post- employment restrictive covenant that violates this subsection is void. HMS' contract expires on April 24, 2022. HMS owes money under the Third Agreement to old AEG for life under Section 1.3.3 c and d. That is $1,750/student. HMS has 416 that meet the requirement which is $728,000. (Appellant interlocutory brief page 35).

IV. *Disputed.* Appellant has fully lawful conduct and demands rulings on the merits to revert the case to arbitration as per motion pending and deposition since July 23, 2019 that Utah has no jurisdiction. (Exhibit 1) despite acknowledging it, HMS keeping filing. Appellant has only one motion at the trial court to revert to arbitration. 5) Ms. Rota's Motion for Partial Summary Judgment filed June 30, 2019. Ms. Rota moved for judgment to enforce the terms of her first two agreements with Howell. [R. 2701, 2764, 2984] If granted, a substantial portion of Ms. Rota's counterclaims would have and should have been in arbitration. (Page 13 Appellant brief January 10, 2022 Interlocutory appeal). HMS has not provided discovery and it knows facts changed as of August 31, 2020. HMS has refused to comply with payments. It is in contempt of the Order from Judge Allen as of 2018 that Third Agreement is operative. Money is due.

CONCLUSION

Utah courts may not award attorneys' fees to a prevailing party unless authorized by statute or contract. *Faust v. KAI Technologies, Inc.*, 2000 UT 82, ,i 17, 15 P.3d 1266. This motion from HMS is a waste of the Court's time as it does not have jurisdiction. Second, the matter is not ruled on the merits. HMS is not owed

money under contract of statute. It has not 'won' the appeal on the merits and no amount is due. Appellant is owed money under contract and statute that has been due since 2018. HMS is in contempt of the Court and has only followed orders as it chooses fit. Appellant DOES NOT understand the Protective Order and has proposed a clearer one and has an objection noted "motion to clarify order" noted herein. This does not show any bad faith from Appellant. She is a student and trying to learn as much as possible, nothing more. Utah follows the "American Rule," which is that attorney's fees are awarded to the prevailing party only if allowed by statute or contract. While there are some exceptions, the rule is widely applied and enforced in Utah.

Dated this 25th day of December 2022
Dr. Aparna Vashisht-Rota

[i] *Miller v. Dunn*, No. 20-11054 (5th Cir. 2022)

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IN THE UTAH COURT OF APPEALS

August Education Group LLC, and Aparna Vashisht Rota,

Appellants, v.

Howell Management Services, LLC, Appellee.

REPLY IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS ON APPEAL DUE TO APPELLANT'S MISCONDUCT

Case No. 20200713-CA

Pursuant to Utah Rule of Appellate Procedure 23(c), Appellee Howell Management Services, LLC ("HMS" or "Appellee") hereby submits this reply in support of HMS's motion seeking an award of attorneys' fees and costs incurred on appeal due to the misconduct of Appellant Aparna Vashisht-Rota.

ARGUMENT

In its motion, HMS requested that this Court determine HMS is entitled to an award of its attorneys' fees and costs and remand to the district court for determination of the amount thereof and entry of a monetary judgment. As HMS explained, this Court previously dismissed the appeal due to the significant misconduct of Appellant Aparna Vashisht Rota ("Rota"). But when dismissing the appeal, this Court failed to address HMS's request for an award of attorneys' fees and costs. HMS thus filed its motion requesting attorneys' fees and costs, citing this Court's inherent authority as well as Utah Rules of Appellate Procedure 24(i), 33(a), and 40(c).

In response, Rota raises several arguments, which appear to assert four overarching points. Rota alleges: this Court lacks jurisdiction to award fees; she has a First Amendment right to slander this Court in proceedings to which she is a party; only a "prevailing party" may be awarded attorney fees, and only when a statute or contract authorizes the award; and Rota's conduct was not undertaken in bad faith. None of these assertions has merit.

First, this Court has jurisdiction over this matter. Following the issuance of this Court's November 1, 2022 order dismissing the appeal, and the November 9, 2022 denial of Rota's petition for rehearing, Rota filed a petition for writ of certiorari. That petition is still pending in the Utah Supreme Court. This Court does not close an appeal or issue a remitter until after the Utah Supreme Court rules on a pending petition for writ of certiorari. See Utah R. App. P. 36(2). Accordingly, any closure of the appeal or order of

remittitur has been stayed. See Utah Appellate Court Docket, Case No. 20200713. This Court has thus continued to retain jurisdiction over the matter, pending a ruling on the petition for writ of certiorari by the Utah Supreme Court.

Moreover, a court retains jurisdiction, post-dismissal, to enter orders addressing the conduct of persons who appear before it. See, e.g., Burke v. Lewis, 2005 UT 44, ¶¶ 23–24, 122 P.3d 533 (detailing the inherent authority of all courts to manage the proceedings before them); Utah Code § 78A-4-103(2) (providing that the "Court of Appeals has jurisdiction ... to issue all ... process necessary ... to carry into effect its judgments, orders, and decrees; or ... in aid of its jurisdiction"); cf. Barton v. Utah Transit Auth., 872 P.2d 1036, 1040 & nn. 6, 7 (Utah 1994) (observing that district court properly retained jurisdiction to adjudicate sanctions following dismissal of the proceeding). There is no jurisdictional or other time bar precluding this Court's exercise of its authority to address misconduct, either with respect to the Court's inherent authority or the authority set forth in rules 24(i), 33(a), and 40(c).

Indeed, HMS's motion was necessitated by this Court's oversight in failing to earlier address the issue of attorney fees, which was not ruled upon in the Court's order of dismissal, nor did the Court subsequently issue an order to show cause why attorney fees should not be awarded. HMS simply seeks a ruling on outstanding issues regarding attorneys' fees and costs.

Second, Rota misunderstands her First Amendment rights. While she may, of course, express her views about issues of private or public concern, her rights are not without limit. As a litigant she is expected to abide

by rules of procedure, to adhere to court orders governing her conduct, and to refrain from insults, slander, and other forms of disrespect. See Burke, 2005 UT 44, ¶ 23 ("'[All] Courts of justice are universally acknowledged to be vested, by their very creation, with the power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates and ... to preserve themselves and their officers from the approach and insults of pollution.'" (citation omitted)). Her ongoing pattern of egregious misconduct has no place in a courtroom, yet it continued despite numerous warnings from the Court and from her counsel. Rota's egregious misconduct warranted the dismissal of her appeal and likewise warrants an award of attorneys' fees and costs. None of the cases Rota cites support her assertion to the contrary.

Third, Rota asserts that only a "prevailing party" may be awarded attorney fees and that such an award may only be made when a statute or contract so authorizes. Rota misunderstands the bases cited by HMS in its request. HMS is not seeking an award as a prevailing party. HMS seeks attorneys' fees and costs as a sanction under this Court's inherent authority, as well as under rules 24(i), 33(a), and 40(c). Rota thus argues against a "prevailing party" theory that HMS has not invoked. In doing so, Rota fails to respond to the bases for attorneys' fees and costs that HMS has demonstrated support an award here.

Fourth, Rota asserts her conduct was not undertaken in bad faith. Bad faith, however, is not required for the award of fees and costs HMS seeks. Moreover, there is ample evidence of Rota's bad faith, as detailed in this Court's November 1, 2022 order of dismissal, which outlines the extensive misconduct in which Rota

engaged, even after being instructed by counsel not to do so, even after receiving an order to show cause why the appeal should not be dismissed, and even after being instructed by the Court not to submit uninvited filings. See 11/1/22 Order, at 2. Rota's misconduct has been extraordinary, both in frequency and in substance. Such extraordinary misconduct warrants the award of fees and costs HMS requests.

Finally, in passing, Rota suggests her claim against HMS has merit. HMS strongly disputes that assertion. But it is also of no consequence. Rota's appeal was dismissed because of the egregious pattern of misconduct in which she has engaged. As HMS demonstrated in its motion, Rota's egregious misconduct merits an award of attorneys' fees and costs. Furthermore, as HMS observed, the burdens of dealing with Rota's misconduct were not limited to the Court. They have also been born by HMS, whose counsel was obligated to review Rota's communications and to respond thereto. HMS should therefore be awarded the attorneys' fees and costs it has requested.

CONCLUSION

For the foregoing reasons, HMS respectfully requests that the Court order that HMS is entitled to double costs and all attorneys' fees incurred by HMS's counsel with respect to this appeal, beginning on the date of Rota's filing of the Reply Brief, April 11, 2022. HMS further requests that the matter be remanded to the district court for a determination of the amount of attorneys' fees and costs to be awarded and entry of a monetary judgment in accordance therewith.

DATED this 5th day of January, 2023.
RAY QUINNEY & NEBEKER P.C.
/s/ Kennedy D. Nate
Jeffrey W. Shields
Attorneys for Appellees

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January 2023, I caused to be deposited a true and correct copy of the foregoing REPLY IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS ON APPEAL DUE TO APPELLANT'S MISCONDUCT in the United States Mail at Salt Lake City, Utah, by first-class mail, postage prepaid, and addressed to the following:

Aparna Vashisht-Rota
Pro Se Litigant
12396 Dormouse Road
San Diego, CA 92129

In addition, I caused to be emailed a true and correct copy of the foregoing document to the email address provided by the Appellant in this matter, which is Aps.Rota@gmail.com.

/s/ Megan Kuchenthal