2016

YAN ROSS and RANDI WAGNER, Plaintiffs and Appellees, v. GLOBAL FRAUD SOLUTIONS, INC., Defendant MICHAEL BARNETT Third Party Intervenor and Appellant Douglas R. Short Rule 11 Respondent and Appellant : Brief of Appellee

Utah Court of Appeals

344

IN THE UTAH COURT OF APPEALS

YAN ROSS and **RANDI WAGNER**, Plaintiffs and Appellees, v. **GLOBAL FRAUD SOLUTIONS, INC.**, Defendant _____ **MICHAEL BARNETT** Third Party Intervenor and Appellant _____ **Douglas R. Short** Rule 11 Respondent and Appellant	Appellate Case No. 20160652-CA Third District Civil No. 070915820

BRIEF OF APPELLEE

The Third District Court
Hon. Ryan Harris

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STATEMENT OF JURISDICTION

Michael Barnett and Douglas Short (collectively, "Short Appellants") purport to appeal from a multitude of orders entered between September 2008 and June 21, 2016. Opening Brief ("Op. Brief"), *passim*. The Short Appellants decline to affirm that this Court has jurisdiction. *See* Op. Brief at 1. If the Short Appellants cannot affirm jurisdiction, the Court should dismiss the appeal.

This Court has jurisdiction under Utah Code Annotated § 78A-4-103(2)(j).

STATEMENT OF ISSUES AND APPLICABLE STANDARDS OF REVIEW

The issues have been restated here for clarity and accuracy. The Short Appellants do not, either in their Statement of Issues or in their Argument, identify the basis in the Record for preservation of their proposed issues on appeal. They also do not identify the respective standards of review applicable to the fourteen issues they list.

1. Issue: Whether the trial court erred in its June 16, 2016 Order finding Barnett's Combined Motion Rule 59 Motion for Amendment of Ruling and/or a New Trial and Rule 52 Motion to Amend Findings and Conclusions of Law and Request for Hearing ("Combined Motion") should be denied?

Standard of Review: Abuse of discretion as to reconsideration of decisions and denial of Rule 59 motion. *Lund v. Hall*, 938 P2d 285, 287 (Utah 1997); *A.K. & R. Whipple Plumbing & Heating v. Aspen Constr.*, 977 P.2d 518, 522 (Utah Ct. App. 1999). Clearly erroneous as to a motion under Rule 52. U.R.Civ.P. 52(a); *Pennington v. Allstate Ins. Co.*, 973 P.2d 932, 937 (Utah 1998).

Preserved: Yes. The Short Appellants filed a timely notice of appeal of the June 21, 2016 Order.

2. Issue: Whether the trial court erred in declining to decide for a second time in its June 16, 2016 Order whether the June 2012 Order was a final appealable order when that issue had been decided in November 2015, was unnecessary to determination of the Combined Motion, and the issue was within the scope of two subsequent appeals which were dismissed with prejudice?

Standard of review: Abuse of discretion applies to requests to reconsider orders. *IHC Health Servs. Inc. v. D & K Mgmt., Inc.*, 2008 UT 73, ¶ 27, 196 P.3d 588.

Preserved: No. The Short Appellants did not file a timely notice of appeal on this issue as it was decided by the November 18, 2015 Minute Entry. R: 8481.

3. Issue: Did the trial court abuse its discretion when it declined to reconsider decisions made in the case by a previous judge or to reconsider its own decisions in the case?

Standard of review: Abuse of discretion. *IHC Health Servs. Inc. v. D & K Mgmt., Inc.*, 2008 UT 73, ¶ 27, 196 P.3d 588.

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, have been decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

4. Issue: Whether the trial court erred in exercising subject matter jurisdiction in hearing challenges to a writ of execution?

Standard of Review: Correctness. *Starways, Inc. v. Curry*, 980 P.2d 204, 205 (Utah 1999).

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, have been decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

5. Issue: Whether the trial court erred in exercising personal jurisdiction over Barnett when he made a general appearance before the trial court and actively litigated before the trial court over many years?

Standard of Review: Correctness. *Starways, Inc. v. Curry*, 980 P.2d 204, 205 (Utah 1999).

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389,

¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, have been decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

6. Issue: Whether the trial court failed to enter adequate finding of fact and conclusions of law at the September 25, 2008 hearing?

Standard of Review: Correctness. *In re Adoption of A.M.O*, 2014 UT App 171, ¶ 9, 332 P.3d 372.

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, have been decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147.

Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

7. Issue: Whether the trail court's finding that TIFRM was an asset of GFS was error?

Standard of Review: Clearly erroneous. *Young v. Young*, 979 P.2d 338, 342 (Utah 1999).

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, have been decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

8. Issue: Whether the trial court erred in interpreting its own orders?

Standard of Review: Mixed. A clearly erroneous standard applies to the trial court's interpretation of its intent, which is a question of fact, in the context of enforcing its own orders. *Gudmunson v. Del Ozone*, 2010 UT 315, ¶ 10, 232 P.3d 1059. Correctness applies to legal conclusions found in the order.

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, were decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

9. Issue: Whether the trial court erred in finding that a continuing injunction had been entered preventing Barnett from dissipating the TIFRM assets?

Standard of Review: Fact of entry of an injunction is reviewed under a clearly erroneous standard. *Pennington v. Allstate Ins. Co.*, 973 P.2d 932, 937 (Utah 1998).

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, were decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

10. Issue: Whether the trial court erred in not requiring a bond from Ross when it enjoined dissipation of the TIFRM assets?

Standard of Review: Abuse of discretion. *Kenny v, Rich*, 2008 UT App 209, ¶ 22, 186 P.3d 989, *cert. denied* 199 P.3d 970.

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that

judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, were decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

11. Issue: Whether the decisions denying the Short Appellants' multiple motions to disqualify Judge Kennedy were all erroneous?

Standard of Review: Abuse of discretion. *State v. Pearson*, 943 P.2d 1347, 1350 (Utah 1997).

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, were decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶

26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

12. Issue: Whether the trial court erred in finding one or the other of the Short Appellants in contempt for conduct in the presence of the court when an affidavit was not filed?

Standard of Review: Clearly erroneous. *Dansie v. Dansie*, 977 P.2d 539, 540 (Utah Ct. App. 1999). Whether findings support legal conclusions reviewed under correction-of-error. *State v. Long*, 844 P.2d 381, 383 (Utah Ct. App. 1992).

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, were decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the

November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

13. Issue: Whether the trial court erred in holding Barnett in contempt for willful violations of orders of the trial court?

Standard of Review: Abuse of discretion. *Dansie v. Dansie*, 977 P.2d 539, 540 (Utah Ct. App. 1999). Whether findings support legal conclusions reviewed under correction-of-error. *State v. Long*, 844 P.2d 381, 383 (Utah Ct. App. 1992).

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, were decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

14. Issue: Whether Barnett was served with orders of the trial court enabling that court to enforce its orders?

Standard of Review: Correctness. *State v. D.M.Z.*, 830 P.2d 314, 316 (Utah Ct. App. 1992).

Preserved: No. This issue was not preserved because decisions and orders entered prior to the March 23, 2013, Judgment are not open to reconsideration as no appeal was taken from that judgment. U.R. App. P. 4(a); *In re Estate of Pahl*, 2007 UT App 389, ¶ 14-15, 174 P.3d 642. Decisions through April 10, 2015, were decided adverse to the Short Appellants by the dismissal of (1) case no. 20140175-CA and (2) the consolidated appeal case no. 20150180-CA. *IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, ¶ 26, 196 P.2d 588; *Robinson v. Robinson*, 2016 UT App 32, ¶ 25-26, 368 P. 3d 147. Subsequent decisions through and including the November 18, 2015 Minute Entry also were not timely appealed. *Cheves v. Williams*, 1999 UT 86, ¶50, 52, 993 P.2d 191.

DETERMINATIVE OR KEY LAW APPLICABLE TO THIS APPEAL

Rule of Appellate Procedure 4(a):

(a) *Appeal from final judgment and order.* In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the entry of the judgment or order appealed from.

STATEMENT OF THE CASE

The underlying case, filed in 2007, concerns breach of contract. R: 1-4. Following partial summary judgment, Ross obtained a writ of execution applicable to a range of assets of Defendant Global Fraud Solutions ("GFS"). R: 109. Mr. Barnett, the principal of GFS, intervened, claiming that certain assets of GFS in fact belonged to him personally.[1] R: 151-52. Following certification of partial summary judgment under Rule 54, a second writ was issued for the assets, which Mr. Barnett again contested. R: 225-27, 228-29. Barnett appeared at the September 15, 2008 hearing, which was continued until September 25, 2008, so that he could obtain counsel. Mr. Barnett attended both hearings and was represented by David Scofield of Scofield Peters at the September 25, 2008 hearing. R: 151; 3556; 3558; 3563; 3566; The trial court affirmed its finding that the TIFRM assets were assets of GFS, not Mr. Barnett. R: 590, 983, 2010.

Mr. Short appeared as counsel for Barnett in January 2009. R: 561-65.

Judgment in the underlying case was entered on March 26, 2013. R: 2873-75. No appeal was taken.

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1 These assets are referred to as the TIFRM assets. TIFRM is The Institute for Fraud Management. The assets generally encompassed TIFRM and its intellectual property.

2 Activity post- March 2013 involved efforts to obtain the TIFRM

Short has been found in contempt or otherwise sanctioned multiple times during the course of this case. R: 3166, 4024-27, 5143-46; 5170-74, 5213-14, 5249-51. Rule 11 sanctions were imposed twice. R: 1754-97, 1795-96; R: 5170-74.

In fall 2014, Ross filed two motions for sanctions against Short under Rule 11 and a third motion for sanctions under the inherent powers of the court. R: 4677--95, 4778-97, 4976-87.[2] Short did not file an opposition to any of these motions. R: 5170. The trial court granted Ross' motions and imposed sanctions under Rule 11 and under the inherent powers of the court. R: 5171-73. The trial court entered an order awarding sanctions of $27,981.07. R: 5250, 8361. All of these sanctions remain unpaid. Mr. Short did not appeal the orders imposing sanctions or the amount of the awards.

Factual Background Regarding The June 6, 2016 Order.

On September 30, 2015, Mr. Short filed two motions to vacate the judgment under Rule 60(b): (1) Rule 60(b) Motion to Vacate (Finality) (R: 7338-60) and (2) Rule 60(b)(1) and (3) Motion to Vacate (Fraud). R: 7321-32. After briefing and oral argument, the trial denied both motions by order entered November 12, 2015. R: 8360-6.

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2 Activity post- March 2013 involved efforts to obtain the TIFRM assets from Barnett and later to obtain and enforce sanctions against Short.

During argument on the motions, Mr. Short asserted that he believed that a motion he had filed in June 2012 was still pending and relevant. Addend.[3] at 1-2. That motion was the Combined Motion for Reconsideration or in Alternative Rule 59 Motion for Amendment of Ruling and/or a New Trial and Rule 52 Motion to Amend Findings and Conclusions of Law and Request for Hearing Regarding January 27, 2009 "Hearing" ("Combined Motion"). *Id.*

The trial court set a briefing schedule for the Combined Motion, requiring new memoranda to be submitted. Addend. at 7. On June 21, 2016, the trial court denied the Combined Motion.[4] Addend. at 1-9.

In the June 2016 Order, the trial court set out the following salient facts:

The June 2012 Order stems from a hearing on January 27, 2009, where Judge Kennedy considered Plaintiffs' Motion for Permanent Injunction and Finding of Contempt as to Barnett, and Barnett's requested Hearing Re Execution. Addend. at 2. The June 2012 Order states that it was entered by Judge Kennedy after being submitted in response to direction from the trial court on March 19, 2012, to "submit

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3 The Record on Appeal does not include a transcript from the hearing on October 30, 2015, or a copy of the June 21, 2016 Order. A copy of the Order is included in the Appellees' Addendum. The hearing transcript was not ordered.

4 Oddly, the Short Appellants do not include the June 21 2016 Order in an Addendum and do not provide a record citation for the Order.

any outstanding unsigned orders." *Id.*

The June 2012 Order contains three salient conclusions: (1) that "Barnett is a party in this action and that the Court has jurisdiction over him"; (2) that certain assets purportedly owned by TIFRM or Barnett "were and are the property of Defendant GFS and were and are not owned by Intervenor Barnett"; and (3) that "the Continuing Injunction remains in place, and that Intervenor Barnett is specifically enjoined from withdrawing or expending [TIFRM's funds]." *Id.* at 2-3.

Barnett filed the Combined Motion on June 20, 2012. Although not identified as a memorandum, the Motion itself contains approximately six pages of argument in support of the requested relief. *Id.* at 3.

On that same day, he also filed a Motion for Extension of Time to File ("the Motion for Extension"), seeking additional time to file a presumably lengthier memorandum in support of the Motion. *Id.*

Neither side submitted for decision the Motion, the Motion for Extension, or the Motion for Clarification. *Id.*

On December 18, 2012, the trial court scheduled a hearing for February 7, 2013. The Notice indicated that the hearing was set for "ALL PENDING MOTIONS." *Id.*

On January 24, 2013, Barnett filed a Motion to Strike Findings and Order Entered June 6, 2012 and Memorandum in Support and Request for Hearing ("the Motion to Strike"). Through the Motion to Strike,

Barnett sought to "strike" the June 2012 Order on the basis that it was entered before the Court had considered Barnett's objections. The record does not reflect that the Motion to Strike was ever submitted for decision or that a specific decision on the Motion to Strike was ever issued. *Id.*

On February 7, 2013, Judge Kennedy conducted the hearing on all pending motions. The record does not reflect that the Motion, the Motion for Extension or the Motion for Clarification were specifically raised at this hearing. *Id.* at 4.

On March 26, 2013, the trial court entered an Order and Final Judgment ("the Final Judgment"). The Final Judgment resolved all outstanding issues in the case and in the trial court's view was a final and appealable order. *Id.*

Barnett did not file a timely notice of appeal from the Final Judgment. *Id.*

On May 6, 2013, the trial court entered an Order ("the May 2013 Order") that included determinations that, in relevant part, largely parallel those entered in the June 2012 Order. Specifically, the Court determined: (1) that the Court "has jurisdiction over . . . Barnett"; (2) that the Court had previously found that "TIFRM was an asset of defendant Global Fraud Solutions"; and (3) that a "Permanent Injunction against Mr. Barnett" had been granted "barring Mr. Barnett from removing or transferring funds or assets of TIFRM." *Id.*

On May 31, 2013, Barnett filed a Rule 52 motion to amend the trial court's May 2013 Order. In his supporting memorandum, Barnett assailed the common determinations between the May 2013 Order and the June 2012 Order, and specifically challenged the propriety of the June 2012 Order. See, . Barnett's Br. at 20 (containing a section titled "Improper June 6, 2012 Order re January 27, 2009"). *Id.*

On August 16, 2013, the trial court entered a Minute Order ("the August 2013 Order") that expressly rejected Barnett's arguments regarding the June 2012 Order and specifically denied the following motions filed by Barnett: "(1) the Intervenor's motion to amend the May 6, 2013, order; (2) the Intervenor's motion challenging the continuing injunction; (3) the Intervenor's motion to quash the writ of execution; (4) the Intervenor's motion to discharge the writ of execution; and (5) the Intervenor's motion to strike the May 6, 2013, order." *Id.*

On February 21, 2014, Barnett and his counsel, Douglas Short ("Short"), filed a Notice of Appeal. The Notice of Appeal states that they are appealing "all . . . prior orders, oral and written rulings, memoranda decisions, minute entries, comments, temporary restraining order(s), purported 'continuing' injunction(s), non-existent injunctions, and so forth, so as to include every single action or omission of the Court in relation to this case as it pertains in any way to Barnett or Short.)" The Utah Supreme Court assigned the appeal to the Utah Court of Appeals.

Id. at 5.

Barnett and Short requested an extension of time within which to file a docketing statement, which request the Court of Appeals denied on June 25, 2014. Barnett and Short were ordered to submit the docketing statement within 15 days. *Id.*

They apparently failed to do so. On August 6, 2014, the Utah Court of Appeals dismissed the appeal pursuant to Rule 3(a) of the Utah Rules of Appellate Procedure for failure to timely file a docketing statement. *Id.*

Barnett and Short petitioned the Utah Supreme Court for certiorari, which petition was denied on January 12, 2015. *Id.*

Barnett and Short then asked the Utah Court of Appeals, by motion, to reinstate the appeal, which request was denied on January 26, 2015. *Id.*

On March 6, 2015, Barnett and Short filed another Notice of Appeal. Again, the Notice of Appeal indicates that they are appealing "all other prior orders, oral and written rulings, memoranda decisions, minute entries, comments, temporary restraining order(s), purported 'continuing' injunction(s), non-existent injunctions, findings of contempt and so forth, so as to include every single action or omission of the Court in relation to this case as it pertains in any way to Barnett or Short[.]" *Id.*

On April 10, 2015, Short filed yet another Notice of Appeal. This Notice of Appeal is directed at every action taken by the Court "during the

supplemental proceedings in this case as may pertain in any way to the propriety of the sanctions awarded against Short[.]" This appeal was consolidated with the appeal filed on March 6, 2015. *Id.* at 5-6.

On October 30, 2015, the trial court held a hearing on multiple issues. During this hearing, Short informed the trial court that he believed that the Combined Motion, filed over three years earlier, remained outstanding. The Combined Motion had never been fully briefed or submitted for decision. *Id.* at 6.

On November 18, 2015, the Court entered a Minute Entry that granted in part the Motion for Clarification. The Court ruled that "[w]hether the [June 2012 Order] was final and appealable right then is subject to debate. While the Order was the Court's final word with regard to ownership of the Assets, there was not a final order entered with regard to the underlying dispute between Plaintiffs and GFS until March 26, 2013. At a minimum, however, it is this Court's view that the [June 2012] Order became final and appealable not later than March 26, 2013. The presence of other outstanding writs of execution, even ones for which a motion to quash were or are pending, does not in the Court's view change the analysis." *Id.*

In the November 18 Minute Entry, the trial court also granted the Motion for Extension and set a new briefing schedule on the Combined Motion that allowed Barnett to file a supporting memorandum in light of

the Court's decision on the Motion for Clarification. The trial court specifically disregarded the earlier briefs by both sides. The trial court determined that Barnett's motion to stay was mooted by its rulings on the Motion for Clarification and the Motion for Extension. *Id.* at 7.

Factual Background Regarding Sanctions and Abusive Tactics.

To date, Short has unpaid monetary sanctions of $40,0231.07:5

1) $9,600 in Rule 11 sanctions, payable to the Third District Court (R: 1795);

2) $1,000 in contempt sanctions, payable to the Third District Court (R: 5145);

3) $750 in contempt sanctions, payable to the Third District Court (R: 3168-69);

4) $900 under the inherent powers of the court, payable to counsel for Plaintiffs (R: 5213-14); and

5) $27,981.07 in sanctions under Rule 11 and the inherent powers of the courts, payable to Plaintiffs (R: 5250).

In addition, the trial court found Mr. Short in contempt on a number of occasions:

(1) Order of May 16, 2013 imposed sanction of $750.00 for conduct in the presence of the trial court. R: 3166-70.

(2) R: 4024-27.

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5 Plus interest at the rate of 2.7% per annum. R: 6633-34.

(3) On December 17, 2014, the trial court imposed sanctions on Mr. Short for his failure to appear. R: 5143-47.

There are also sanctions pending against Mr. Barnett for contempt of court. On September 5, 2013, the trial court imposed contempt sanctions on Mr. Barnett for his willful violation of the May 6, 2013 Order to responded to discovery requests concerning the location of TIFRM assets. R: 4024-27. Mr. Barnett has not complied with either the May 6 or September 5 Orders (the latter aimed at securing compliance with the former). Sanctions were again imposed on Mr. Barnett on December 17, 2014. R: 5143-47. Those sanctions (and underlying orders) remain unfulfilled.

The current appeal is the sixth appeal filed in this case by Mr. Short on behalf of his client or himself. The first appeal, Case 20120755-CA, was filed July 27, 2012. R: 2040-41. It was dismissed (without prejudice) on June 10, 2013, following a motion by Ross. R: 3318-20. The second appeal, Case no. 20130862-CA, was filed three months later as a Petition for Permission to Appeal, on September 26, 2013. R: 4102-168. Permission was denied November 19, 2013. R: 4391-92. A third appeal was initiated by a Notice of Appeal filed February 21, 2014, case no 20140175-CA. R: 4457-59. The third appeal was dismissed on August 6, 2014, again following a motion by Ross. R: 4526-30. The petition for

certiorari with respect to that dismissal was denied January 9, 2015. R: 5212.

The fourth appeal, Case no. 20150180-CA, was filed on March 6, 2015 on behalf of Mr. Barnett. R: 5266-68. On May 21, 2015, it was consolidated with the fifth appeal, Case no. 20150296-CA, filed April 10, 2015, filed on behalf of Short. R: 5690-93. On May 17, 2016, the consolidated fourth and fifth appeals were dismissed. Addend. at 18. The consolidated appeal included claims by both Mr. Barnett and Short.

The fourth and fifth appeals were dismissed because the Short Appellants refused to comply with deadlines and orders of the Court of Appeals, even though they had been granted extensions. *Id.* In this, the seventh appeal, the Short Appellants missed the deadline for filing their Opening Brief, and did not seek an extension until after Ross filed a Motion to Dismiss.

SUMMARY OF ARGUMENTS

I. The Short Appellants' Refusal to Comply With the Rules of Appellate Procedure Warrant Dismissal of Their Appeal.

Rule 24 is mandatory on its face. U.R.App.P. 24(a) ("shall contain"); U.R.App.P. 24(e) ("References shall be made to the pages of the original record"). Furthermore, this Court's Order of February 6, 2017 expressly states that the Short Appellants' "filed brief must comply with all applicable rules." Order of February 6, 2017. Because the Short

Appellants' Opening Brief violates many of the provisions of Rule 24, the appeal should be dismissed. *Koulis v. Standard Oil Company of California*, 746 P.2d 1182, 1184-85 (Utah Ct. App. 1987).

Rule 24 requires an appellant's brief to state, for each issue presented for review, the applicable standard of appellate review and citation to supporting authority. U.R.App.P. 24(a)(5). Rule 24 also requires, for each issue presented for review, either a specific citation to the record showing that the issue was preserved or a statement of the basis for seeking review of an issue not preserved in the trial court. U.R.App.P. 24(a)(5)(A), (B); 24(f). The Short Appellants did not comply with these provisions. Op. Brief at 4-5. The Short Appellants also have not complied with Rule 24(a)(6) which requires them to set out the determinative provisions of the Constitution, statutes, or rules, or to provide that information in an addendum. U.R.App.P. 24(a)(6).

In addition, the sections of the Opening Brief labeled Nature of Proceedings and Background, intended to meet the 24(a)(7) requirement of a statement of the case, do not comply with Rule 24. The section labeled Nature of Proceedings does not include any citations to the record. *See* Op. Brief at 6-8. The Background section fails under 24(e) because it does not cite the record. *See* Op. Brief at 9-16. While it does include citations to various transcripts and exhibits, none of the citations refer to the Record

on Appeal. *Id.* Finally, the Short Appellants have not marshaled the evidence in support of the June 2016 Order, as required by Rule 24.

The general refusal to comply with Rule 24 warrants dismissal of the appeal. It imposes unreasonable burdens on Ross and on the Court to do the work properly falling to the Short Appellants.

II. Prior Appeals And Jurisdictional Limitations Of Time Have Made Thirteen of the Short Appellants' Fourteen "Issues" Moot.

No appeal was taken from the final judgment entered March 26, 2013. Therefore all decisions made prior to March 26, 2013, are not subject to appellate review. U.R.App.P 4; *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, ¶ 19, 16 P.3d 1214 (applying claim preclusion); *Robinson, supra*, 2016 UT App 32, ¶ 25-26 (applying law of the case doctrine to preclude defenses based on factual claims addressed in prior appeal). As a result, Issues 3 through 14, all of which arose before March 26, 2013, are outside the jurisdiction of this Court.

In addition, consideration of these issues is barred by the Short Appellants' prior appeals. Five of the Short Appellants' six prior appeals have been dismissed. The sole prior appeal still pending is case 20151055-CA, filed December 11, 2015. All issues which were or could have been raised as of December 11, 2015, *i.e.*, those arising after March 26, 2013 and before December 11, 2015, are either encompassed within the 1055 appeal or have been waived. *Davis & Sanchez, PLLC v. University of Utah Health*

Care, 2015 UT 47, ¶ 15, 349 P.3d 748; *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, ¶ 19, 16 P.3d 1214 (applying claim preclusion); *Robinson*, 2016 UT App 32, ¶ 25-26 (applying law of the case doctrine to preclude defenses based on factual claims addressed in prior appeal). Hence, none of the decisions entered by the trial court before December 11, 2015, may be considered here. *Id.* Once again then, Issues 3 though 14 are not subject to review.

Issue 2 has not been preserved because a timely appeal was not filed, when that issue was decided by the trial court's order of November 18, 2015. U.R.App.P. 4; *Johnson v. Office of Professional Conduct*, 2017 UT 7, ¶ 10, -- P.3d – (no jurisdiction to hear untimely appeal).

Thirteen of the fourteen issues listed by Short Appellants are either barred by failure to timely appeal, encompassed by an appeal dismissed with prejudice, or are encompassed by a prior still pending appeal.

III. The June 20, 2016 Order Correctly Denied The Combined Motion.

The Short Appellants challenge the trial court's Order of June 20, 2016 ("June 2016 Order") on grounds that ignore the findings and decision of the trial court. The Short Appellants' argument hinges on use of the word "stale" by the trial court to characterize a motion that had lain dormant for four years, urging that the word be interpreted as the

application of a new, unanticipated argument advanced by the trial court *sua sponte*. Op. Brief at 16.

Whatever the choice of words made by the trial court, the June 2016 Order is grounded on intervening decisions of both the trial court and the appellate courts which rendered the Combined Motion moot, *i.e.*, the Combined Motion was stale because all of the predicates for the Combined Motion had been decided against the Short Appellants and those decisions had been affirmed on appeal. Addend. at 7-9.

Furthermore, the grounds relied on by the trial court were identified and advanced in Ross' Opposition to the Combined Motion. R: 8718-27. Appellants therefore had notice and an opportunity to address the arguments, but failed to persuade the judge.

IV. An Award of Fees Is Warranted Based On The Short Appellants' Abusive Tactics And Frivolous Appeal.

Rules of Appellate Procedure 24, 33, and 40 permit an appellate court to impose appropriate sanctions, including an award of costs and fees, on a party or counsel who persist in advancing a frivolous appeal or argument, or which needlessly multiply or delay proceedings, or advance an appeal or argument for an improper purpose.

This appeal warrants a sanction of costs and fees against the Short Appellants. The appeal is, throughout, frivolous. Thirteen of fourteen issues are barred because not within the jurisdiction of this court, and the

Short Appellants offer no reason to think that those issues are within the jurisdiction of the court. The Short Appellants seek to re-litigate issues within the scope of prior appeals already decided against the Short Appellants. As to the one issue not outside the reach of this court, they fail to marshal the evidence salient to that order and offer no cogent argument supporting their request for reversal of the trial court.

The Short Appellants have ignored the requirements of Rule 24, filing a brief lacking in basic elements of an acceptable brief, including, e.g., marshaling the evidence, citation to the record, or identification of applicable standards of review. These are not the shortcomings of an inexperienced pro se appellant. Mr. Short , counsel for and one of the Short Appellants, is an experienced lawyer, well-aware of the requirements for a proper appeal.

ARGUMENT

I. The Short Appellants' Refusal to Comply With the Rules of Appellate Procedure Warrants Dismissal of Their Appeal.

Rule 24 is mandatory. U.R.App.P. 24(a) ("shall contain"); U.R.App.P. 24(e) ("References shall be made to the pages of the original record"). Furthermore, this Court's Order of February 6, 2017 Order expressly states that the Short Appellants' "filed brief must comply with all applicable rules." Order of February 6, 2017. Because the Short Appellants' Opening Brief violates applicable provisions of Rule 24, the

appeal should be dismissed. *Dahl v. Dahl*, 2015 UT 79, ¶ 67, -- P.3d -- (denial of appeal warranted when appellant fails to provide record citations for issue); *Anderson v. Anderson*, 2015 UT App 260, ¶6, 361 P.3d 698 (appellant's burden to meet requirements of Rule 24).

Rule 24 requires an appellant's brief to state, for each issue presented for review, the applicable standard of appellate review and citation to supporting authority. U.R.App.P. 24(a)(5). Of the fourteen listed issues, just one (Issue 3) includes a statement of the standard of review and supporting authority. Op. Brief at 4. A later section consisting of just three sentences, none of which references any of the issues for review, cannot fulfill either the letter or the spirit of 24(a)(5) because it does not set out the standard of review applicable to specific issue or provide supporting authority. Op. Brief at 5. Issues 1, 2, and 4 through 14 fail the standard and therefore no consideration should be given to any of those issues.

Rule 24 also requires, for each issue presented for review, either a specific citation to the record showing that the issue was preserved or a statement of the basis for seeking review of an issue not preserved. U.R.App.P. 24(a)(5)(A), (B); 24(f). The Short Appellants ignore these requirements as well. Only four of the fourteen issues listed by the Short Appellants include any citation to the Record (4, 5, 10, and 14) and only one (Issue 14) even arguably meets the standard of Rule 24(f). Op. Brief at

4-5. Each of the other issues, 1 through 3, 6 through 9, and 11 and 12, should not be considered by this Court.

Under Issue 4 the Short Appellants cite to R: 3849.[6] But the issue is not there preserved. What they cite to is the first page of an August 2013 filing which is in no way at issue here. It may be that somewhere in the Combined Motion the Short Appellants raised the issue of subject matter jurisdiction, but it should not be up to the Court or opposing counsel to find that citation. U.R.App.P. 24(a)(5) and 24(f); *Koulis, supra*; *Tanner v Carter*, 2001 UT 18, ¶ 19, 20 P.3d 332 (stating that it is not an appellate court's burden "to comb the record for evidence" in support of an appellant's argument). Moreover, there is just one citation to the December 2015 memoranda for the Combined Motion in the Opening Brief, at page 23. That citation is to the first page of the 2015 supporting memorandum for the Combined Motion where none of the issues listed by the Short Appellants is mentioned, let alone discussed. Therefore no issue has been preserved.

Issue 5 cites to R: 3867-68, but those pages do not concern whether the trial court had personal jurisdiction over Barnett and are not part of the December 2015 briefing. The citation is to a 2013 Opposition to Motion for Sanctions and in Support of Motion to Strike May 6th Order, and concern

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6 The 2015 Memorandum in Support of the Combined Motion is found at R: 8549-72, the Opposition at R: 8718-27, and the Reply at R: 8809-34.

whether an order of the trial court (not at issue here) was void. 24(f) is not met.

Issue 10 concerns whether a bond was required for an injunction. Op. Brief at 5. The Short Appellants claim that the issue is preserved at 3906. The word "bond" does not even appear at 3906 of the Record, which is no surprise because that cite is to a page in the Opposition to Motion for Sanctions noted above. There is therefore no citation preservation of the issue.

Issue 14 concerns whether the trial court had personal jurisdiction over Barnett. Op. Brief at 5 (citing R: 3879-3884). Here, at last, there is a citation to the Record addressing the topic, but it is still insufficient because the discussion is in a motion that is not within this appeal. It is a 2013 memorandum on a motion which is not part of this appeal: Combined Memorandum in Opposition to Motion for Sanctions and in Support of Motion to Strike May 6th Order. So there are no citations showing preservation of any of the issues.

Of the remaining ten issues, seven (3, 6, 8, 9, 11, 12, 13) make a general reference either to the Combined Motion (not specifying whether 2012 or 2015 version) or to some other motion, but without citation to the Record. The remaining three issues (1, 2, and 7) refer to "*sua sponte* ruling" or plain error, but do not even cite the Record location of the salient order and it is not provided in Appellants' Addendum.

The Short Appellants also have not complied with Rule 24(a)(6). They have neither set out determinative provisions of the Constitution, statutes, or rules, nor provided them in an addendum. U.R.App.P. 24(a)(6). Even the June 21, 2016 Order is not set out in an Addendum.

Further, the sections of the Opening Brief labeled Nature of Proceedings and Background, intended to meet the 24(a)(7) requirement of a statement of the case, also do not comply with Rule 24. The Nature of Proceedings section does not include any citations to the Record and entirely ignores 24(e)'s citation standards. *See* Op. Brief at 6-8. The Background section recites the Short Appellants' view of the factual and procedural history of the underlying case, but fails 24(e) because it does not cite the Record. *See* Op. Brief at 9-16. While it does include citations to various transcripts and exhibits, none of the citation is to the Record. *Id.* None of the documents are included in an Addendum. There is no excuse for this failure to follow Rule 24(e), which is, in any event, mandatory on its face and required by the Court's February 6, 2017 Order. U.R.App.P. 24(e) ("references shall be made to the pages of the original record"). Indeed, the Short Appellants even omit a copy of the order purportedly subject of the appeal. *See* Op. Brief at 4, 16-20. The Opening Brief also lacks a Summary of Argument, as required by Rule 24(a)(8).

Finally, the Short Appellants challenge the trial court's June 2016 Order, which is grounded in the factual record of the case as that record

rendered the Combined Motion "stale" or moot. A challenge to such findings is governed, in part, by Rule 24(a)(9), which requires that Short Appellants to marshal the evidence in support of the June 2016 Order. U.R.App.P 24(a)(9); *Simmons Media Group, LLC v. Waykar, LLC*, 2014 UT App 145, ¶42, 335 P.3d 885. The Short Appellants do not marshal the evidence supporting the June 2016 Order. Nor do they comply with the other requirements of Rule 24(a)(9): their arguments lack citation to the parts of the record relied upon and the grounds for reviewing issues were not preserved.

In light of the plain language of the Rule and of the Court's Order of February 6, 2017, these violations of Rule 24 warrant denial and dismissal of the appeal.

II. Prior Appeals And Jurisdictional Limitations Bar Thirteen of the Short Appellants' Fourteen Issues.

Judgment in the case below was entered on March 26, 2013. No appeal was taken from the final judgment, rendering all decisions made prior to March 26, 2013, placing all decision made prior to that date beyond appellate review. U.R.App.P. 4. The Short Appellants therefore cannot appeal decisions made prior to March 26. Issues 3 through 14 all arose before March 26, 2013, are therefore outside the jurisdiction of this Court. Those portions of the appeal should be dismissed.

In addition, the Short Appellants have filed six prior appeals. Five of the six prior appeals have been dismissed. The sole prior appeal still pending, case 20151055-CA, was filed December 11, 2015. Thus, as a matter of law, all issues that were or could have been raised in the December 11, 2015 appeal, *i.e.,* those arising between March 26, 2013 and December 11, 2015, are either encompassed within the 20151055 appeal or have been waived. Only decisions even potentially subject to review in this appeal are those arising after December 11, 2015. Only the Issue 1 meets this standard.

Issue 2 – whether the June 6, 2012 Order was a final order – was resolved by the trial court in its Order of November 18, 2015. R: 8481 ("No further order was contemplated by the Court with regard to its rulings concerning ownership of the Assets. ... At a minimum, however, it is this Court's that the order became final and appealable not later than March 26,2013."). Of course, the time for appeal of the November 18, 2015 Order expired December 18, 2015, long before the July 2016 Notice of Appeal in this case. U.R.App.P. 4, 5. Appellate review of Issue 2 is therefore barred because not timely requested.

The Short Appellants face another fatal defect: They may not raise for a second or third time issues encompassed by their appeals of February 21, 2014, and March 6, 2015 (case 20140175-CA and case 20150180-CA, respectively). *Davis & Sanchez, PLLC v. University of Utah Health Care,*

2015 UT 47, ¶ 15, 349 P.3d 748 (issue may not be raised in subsequent appeals). Both of those appeals were dismissed with prejudice. R: 4526-30 (appeal dismissed), 5210-11 (Certiorari denied); Addend. at 18, 21-22 (order dismissing); *Peterson v. Armstrong*, 2014 UT App 247, ¶ 19, 337 P.3d 1058 (dismissal is on the merits unless otherwise stated by the court); *State v. Clark*, 913 P.2d 360, 362-63 (UT App 1996); *State v. Goff*, 2001 UT App 363. All issues encompassed by either of those appeals, which must certainly include at least all of the issues identified in the two Docketing Statements, or which could have been raised in the appeals, have been decided against the Short Appellants. Issues 3 through 14 fall under this standard, and so may not be considered by this Court.

The result is that thirteen of the fourteen issues listed by the Short Appellants are either barred by failure to timely appeal, have been disposed of because encompassed by an appeal dismissed with prejudice, or have disposed of because encompassed by a prior still pending appeal. Those thirteen issues, 2 through 14, must be dismissed. Only Issue 1 remains as potentially before this Court. As explained below, it too fails and the appeal should be denied.

Finally, the arguments of the Motion are largely preempted by the pending appeal in Case 20151055. The same arguments concerning personal and subject matter jurisdiction were made in the Rule 60 Motions at the heart of that appeal.

In both appeals, the issue of whether the trial court is improperly refusing to reconsider decisions is expressly raised. *Cf.* 1055 Op. Brief at 49-54 *with* 0652 Op. Brief at 20-3. Both appeals argue that the trial court lacked subject matter jurisdiction for any rulings about Barnett or Short. *Cf.* 1055 Op. Brief at 44-49 *with* 0652 Op. Brief at 23-27. Both appeals include argument that the trial court lacked personal jurisdiction over Barnett and over Short. *Cf.* 1055 Op. Brief at 7, 21, 26 *with* 0652 Op. Brief at 21, 27-29, 50-53. Section IV of the 20151055-CA (*see* Op. Brief at 54-58) appeal covers the Short Appellants complaints about decisions by Judge Kennedy. Such complaints are also addressed in 1055 Opening Brief at pages 19-20 (adequacy of findings at September 2008 hearing), 26-28 (ownership of TIFRM assets), 52 (reliance on personal recollections by Judge Kennedy), 36-38 (contempt by Barnett). Yet those points are subsumed by Issues 3 through 14 of their 0652 Opening Brief. It is apparent that the earlier, 2015, appeal covers nearly all of the issues set out in the later, 2016, appeal. The later appeal is therefore pre-empted as to all Issues but Issue 1, and should be dismissed.

III. The June 20, 2016 Order Correctly Denied The Combined Motion.

The Short Appellants raise only one potential issue for appellate review. They challenge the trial court's Order of June 20, 2016 ("June

2016 Order")[7] on the grounds that use of the word "stale" to characterize a motion that had lain dormant for four years, and all of whose issues had been disposed of on appeal, amounts to the application of a new, unanticipated argument advanced by the trial court *sua sponte*. Op. Brief at 4, 16-18. This argument fails.

Whatever the choice of words made by the trial court, the June 2016 Order clearly grounds the denial of the Motion on intervening decisions of both the trial court and the appellate courts, decisions which, separately and collectively, rendered the Motion moot, *i.e.*, the Motion was stale because all of the predicates for the Motion had been decided against the Short Appellants by the trial court and by the dismissals of their previous appeals. Addend. at 1-11.

Each of the 2014 and 2015 appeals included appeal of all orders and decisions rendered before the dates of the respective Notices of Appeal, and so necessarily included Issues 3 through 14. The February 21, 2014, Notice of Appeal (case no. 20140175-CA) appealed the order dated January 24, 2014, and "all other prior orders, oral or written rulings, memoranda, decisions, minutes entries comments, temporary restraining order(s), purported "continuing" injunction(s), non-existent injunctions, and so forth, so as to include every single act or omission of the Court in relation to this case as it pertains in any way to Barnett or Short." R: 4457. Thus,

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7 The June 2016 Order is found at Addendum 1-9.

the February 2014 Notice clearly covered all decisions entered prior to January 24, 2014. When that appeal was dismissed August 6, 2014, review of any of the orders prior to February 21, 2014, was no longer available.[8]

The March 6, 2015 Notice of Appeal (case no. 20150180-CA) employed similarly broad language, covering all decisions prior to March 6, 2015.[9] R: 5267. It too ended in dismissal (June 7, 2016), and once again the Petition for Certiorari was denied (September 28, 2016). Addend. at 21-22, 24. So once again the orders predating March 6, 2015, are no longer open to appellate review. The two failed appeals bar review of Issues 3 through 14. The appeals and dismissals are specifically referenced in the June 21, 2016 Order and relied on by the trial court as reason to deny the Motion. Addend. at 5, 6, 9-11. They are fair grounds to call the Motion 'stale.'

In addition, in the period since June 2012, the trial court revisited each of the arguments advanced by the Short Appellants and rejected each of them, as noted in the June 2016 Order. Addend. at 1-11, *passim*. Repeated consideration and rejection of the arguments of the Combined Motion is grounds for denial and warrants labeling the arguments as 'stale.'

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8 The Petition for Certiorari was denied on January 9, 2015.

9 The Notice of Appeal for Case 20150180-CA adds "findings of contempt" to the list. R: 5267.

The claim that the Short Appellants were not on notice that such grounds for denial were before the trial court cannot be sustained. Exactly such grounds were presented in Ross' Opposition to the Combined Motion. R: 8723-27 (pointing out that argument of Motion had already been made and rejected by the trial court and too much time had passed to reconsider). The Short Appellants had ample opportunity to address the arguments, and actually did, despite what they claim in their opening brief here. R: 8822-25, 8827-29, 8831-34. There was nothing surprising then about the June 2016 Order.

IV. ROSS SHOULD BE AWARDED COSTS AND FEES.

The Court may award costs and fees under Rules of Appellate Procedure 24(k), 33, and 40. It should do so here.

The Short Appellants' Opening Brief violates numerous requirements of Rule 24. The Short Appellants did not cite to the record to show where any of the issues were preserved. They did not provide citations to the record in support of their arguments or description of the case. They did not include a summary of the argument. They did not even cite to or include in an Addendum the order appealed from, or any of the briefing which the order addressed. Dismissal, or, in the alternative, an award of costs and fees is warranted under Rule 24(k). *Simmons Media Group, LLC. V. Waykar, LLC*, 2014 UT App 145, ¶48-50, 335 P.3d 885 (awarding fees for violations of Rule 24, including failure to cite record,

mischaracterizing record and relevant orders, failing to marshal evidence); *Cariton v Brown*, 2014 UT 6, ¶ 18, 21, 323 P.3d 571 (appellate court may disregard brief that does not comply with Rule 24).

The appeal is frivolous. First, virtually all of the appeal is pre-empted by prior appeals of these Appellants. The same issues were decided in previous appeals, adverse to the Short Appellants, yet they raise the issues again and again. They do not even acknowledge those prior appeals, let alone attempt to explain why the previously dismissed appeals do not dispose of all of their issues here. They offer no cogent arguments for their positions, in part because they make no effort to engage with the actual arguments and decisions below.

Sanctions are also appropriate under Rule of Appellate Procedure 33. U.R.App.P. 33(a) (damages may be awarded for appeal that is frivolous or for delay). The primary purpose of the appeal appears to be to further delay resolution of whether Short and Barnett must comply with orders, whether they must, at last, pay the sanctions imposed on them in multiple orders of the trial court. The scope and frequency of the sanctions, for contempt, for violation of Rule 11, and under the inherent powers of the court, are discussed in detail at pages 45-51 of the Appellees' Brief in case 20150155-CA. They have impugned the integrity and competence of both Judge Kennedy and Judge Harris, impugned the integrity of opposing counsel, ignored orders they disagreed with, and multiplied proceedings

without end. Even before the appellate courts, the Short Appellants have an impressive record of ignoring or flouting orders of the Court and the Rules of Appellate Procedure. Such were the grounds on which the appeals in case no. 20140175-CA and case no. 20150180-CA were dismissed. They conceded that the appeals in case no. 20120755-CA and case no. 20130862-CA never should have been filed, but only in the face of motions from Ross. Mr. Short's misconduct is the basis of disciplinary proceedings before the Fourth District Court, case no. 160400350.

Rule of Appellate Procedure 40 also enables a court to impose appropriate sanctions on an attorney for abusive litigation conduct. U.R.App.P. 40(c); *Peterson v. Sunrider Corp.*, 2005 UT 353. Sanctions are appropriate under Rule 40(b) when a filing (1) is presented "for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation" or (2) the legal contentions are not "warranted by existing law or by a nonfrivolous argument for extension, modification, or reversal of existing law," or (3) the factual contentions of the paper are not "supported by the record on appeal. U.R.App.P. 40(b), (c). The Short Appellants are in violation of each of these provisions.

The appeal itself is part of a pattern of needless delay and multiplication of motions, needlessly raising the costs of litigation. There have been seven appeals filed, all but two dismissed before the opening

brief was even filed.[10] Several were dismissed because the Short Appellants refused to comply with the Rules of Appellate Procedure or orders of this Court. R: 4526-30; 5210-11; Addend. at 18, 21-22. Mr. Short has had Rule 11 sanctions imposed twice for filing multiple papers that lacked a reasonable basis in law or fact, resulting in over $40,000 in unpaid sanctions. *See* p. 22 *supra*. Mr. Short and Mr. Barnett have both been found to be in contempt of the trial court. *Id.*

The instant appeal ignores well-established law on timely appeal, and seeks to raise the same issues for a second or third time. Although the Short Appellants are well-aware of the legal obstacles, they make no effort at all to explain why their claims are not barred by lack of appellate jurisdiction. Their Opening Brief is bereft of citations to the Record. They insist upon asserting factual claims that have been rejected by the trial court: by Judge Kennedy, by Judge Toomey, and by Judge Harris. *Cf.* Op. Brief at 30-47 *with* R: 1754-97; 5170-74. *See also*, Appellees' Brief, filed July 8, 2016 in case no. 20151055-CA at 45-50.

The record supports an award Ross of costs and fees incurred in connection with this appeal.

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10 *See* the dockets for cases 20120755-CA, 20130862-CA, 20140175-CA, 20150180-CA, 20160658-CA. Petitions for Certiorari regarding 20160658-CA denied in 20160658-SC and regarding 20140175-CA denied in 20140985-SC

CONCLUSION

This Court should affirm the decisions below. Only one of the Short Appellants' fourteen issues is before the Court; the remaining thirteen issues are barred as untimely and so outside the jurisdiction of the Court. The one decision by the trial court properly before the Court, the first issue, was properly decided by the trial court, and should be affirmed. The Combined Motion was moot, "stale" as the trial court described it, through the failure of the Short Appellants' to timely pursue the Combined Motion. Moreover, as the record amply demonstrates, the Combined Motion also failed because the predicates of the Combined Motion had all been decided adversely to the Short Appellants over the four years between when it was filed and finally presented to the trial court.

But the Court need not address the merits of the Short Appellants' arguments. Their decision to ignore the requirements of the Rule 24 and this Court's Order of February 6, 2017, provide ample grounds on which to dismiss the appeal. The Short Appellants not provided the standards of review for their issues, have not provided record citations showing preservation, have not provided a copy of the trial court order they appeal (or record citation to the order), have not even provided citations to the relevant briefing before the trial court. They omitted a summary of argument. They do not marshal the evidence. In short, they exempted themselves from the plain language requirements of Rule 24.

Finally, Ross should be awarded costs and attorney's fees. Nearly every issue presented by the Short Appellants is untimely and, more importantly, encompassed by one of their prior appeals already dismissed with prejudice. The appeal is an effort at delay, and to further increase the costs of litigation for Ross, who respectfully requests an award of fees.

Dated March 9, 2017.

_____

John H. Bogart
Telos VG, PLLC
Attorneys for Appellees

CERTIFICATE OF COMPLIANCE

I, the undersigned counsel of record for the Appellees in this case hereby certify that:

1. This Brief complies with the type-volume limitation of Utah R. App. P 24(d)(1)(A) because the Brief contains 10,081 words, excluding the parts of the Brief exempted by Utah R. App. P 24(f)(1)(B).

2. This Brief complies with the typeface requirements of Utah R. App. P. 27(b) because it has been prepared in proportionally spaced typeface using Word 2011 in 13-point Georgia font.

Dated March 9, 2017. _____

Certificate of Service

The undersigned hereby certifies that Appellees served Appellants by U.S. mail with the forgoing Brief of Appellees on March 9, 2017:

Douglas R. Short
2290 East 4500 South, Suite 220
Holladay, UT 84117

Attorney for Barnett and appearing pro se

/s/_____

APPELLEES' ADDENDUM

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

YAN ROSS and RANDI WAGNER,	**RULING AND ORDER**
Plaintiffs,	**Case No. 070915820**
vs.	**June 21, 2016**
GLOBAL FRAUD SOLUTIONS, LLC,	**Judge Ryan M. Harris**
Defendant.	

This matter is before the Court on Michael Barnett's Combined Motion for Reconsideration or in Alternative Rule 59 Motion for Amendment of Ruling and/or a New Trial and Rule 52 Motion to Amend Findings and Conclusions of Law and Request for Hearing Regarding January 27, 2009 "Hearing" ("the Motion"). The Motion has been fully briefed and, although no request to submit has been filed, the Motion is ripe for decision. Barnett has asked the Court for a hearing on the Motion, but the Court determines that oral argument would not substantially assist the Court in resolving the Motion. Having carefully reviewed the record and considered the arguments of counsel, the Court issues the following Ruling and Order.

INTRODUCTION

In this Ruling and Order, the Court finally disposes of a motion that was filed in June 2012 and still, to this day, has not yet been submitted for decision. For reasons best known to himself, Barnett has let the Motion lie fallow for over four years. During a hearing last fall, in October 2015, Barnett's counsel indicated that the presence of this unadjudicated Motion was, in his view, one of the things that was preventing this case from becoming "final." In response to this assertion, and before reviewing the substance of the Motion, the Court in an effort to finally bring the Motion to a head ordered the parties to complete briefing on the Motion and set a briefing schedule.

The Motion is now fully briefed but, for reasons that remain a mystery to the Court, neither side has ever submitted the Motion for decision, even upon completion of the recent briefing. The Court is uncomfortable having a four-year-old fully-briefed motion continue to sit unsubmitted in its file and, therefore, *sua sponte* submits the matter for decision.

In the Motion, Barnett challenges the Court's Findings and Order set forth in a decision entered over four years ago, on June 6, 2012 ("the June 2012 Order"). Specifically, Barnett disagrees with the following conclusions in the June 2012 Order: (1) that "Barnett is a party in this action and that the Court has jurisdiction over him"; (2) that certain assets purportedly owned by The Institute of Fraud Risk Management, Inc. ("TIFRM") or Barnett "were and are the property of Defendant GFS and were and are not owned by Intervenor Barnett"; and (3) that "the Continuing Injunction remains in place, and that Intervenor Barnett is specifically enjoined from withdrawing or expending [TIFRM's funds]." Without reaching the underlying merits of Barnett's arguments, the Court determines that Barnett's four-year delay in submitting the Motion for decision, combined with the interim rulings by Judge Kennedy and the appellate courts, render the Motion stale. Accordingly, the Motion is DENIED.

BACKGROUND

Given the convoluted procedural history of this case, the Court recites the following background to provide the necessary context for the Court's Ruling and Order:

1. The June 2012 Order stems from a hearing on January 27, 2009, where Judge Kennedy considered Plaintiffs' Motion for Permanent Injunction and Finding of Contempt as to Barnett, and Barnett's requested Hearing Re Execution. The June 2012 Order states that it was entered by Judge Kennedy after being submitted in response to direction from the Court on March 19, 2012, to "submit any outstanding unsigned orders."

2. As noted above, the June 2012 Order principally contains three conclusions: (1) that "Barnett is a party in this action and that the Court has jurisdiction over him"; (2) that certain

assets purportedly owned by TIFRM or Barnett "were and are the property of Defendant GFS and were and are not owned by Intervenor Barnett"; and (3) that "the Continuing Injunction remains in place, and that Intervenor Barnett is specifically enjoined from withdrawing or expending [TIFRM's funds]."

3. Barnett filed the Motion on June 20, 2012. Although not identified as a memorandum, the Motion itself contains approximately six pages of argument in support of the requested relief.

4. On that same day, he also filed a Motion for Extension of Time to File ("the Motion for Extension"), seeking additional time to file a presumably lengthier memorandum in support of the Motion.

5. One day later, Barnett filed an Expedited Motion for Clarification ("the Motion for Clarification"), seeking direction from the Court as to whether the Court intended the June 2012 Order to be a final order.

6. Neither side submitted for decision the Motion, the Motion for Extension, or the Motion for Clarification.

7. On December 18, 2012, the Court scheduled a hearing for February 7, 2013. The Notice indicated that the hearing was set for "ALL PENDING MOTIONS."

8. On January 24, 2013, Barnett filed a Motion to Strike Findings and Order Entered June 6, 2012 and Memorandum in Support and Request for Hearing ("the Motion to Strike"). Through the Motion to Strike, Barnett sought to "strike" the June 2012 Order on the basis that it was entered before the Court had considered Barnett's objections. The record does not reflect that the Motion to Strike was ever submitted for decision or that a specific decision on the Motion to Strike was ever issued.

9. On February 7, 2013, Judge Kennedy conducted the hearing on all pending motions. The record does not reflect that the Motion, the Motion for Extension or the Motion for Clarification were specifically raised at this hearing.

10. On March 26, 2013, the Court entered an Order and Final Judgment ("the Final Judgment"). The Final Judgment resolved all outstanding issues in the case and in the Court's view was a final and appealable order.

11. Barnett did not file a timely notice of appeal from the Final Judgment.

12. On May 6, 2013, the Court entered an Order ("the May 2013 Order") that included determinations that, in relevant part, largely parallel those entered in the June 2012 Order. Specifically, the Court determined: (1) that the Court "has jurisdiction over . . . Barnett"; (2) that the Court had previously found that "TIFRM was an asset of defendant Global Fraud Solutions"; and (3) that a "Permanent Injunction against Mr. Barnett" had been granted "barring Mr. Barnett from removing or transferring funds or assets of TIFRM."

13. On May 31, 2013, Barnett filed a Rule 52 motion to amend the Court's May 2013 Order. In his supporting memorandum, Barnett assailed the common determinations between the May 2013 Order and the June 2012 Order, and specifically challenged the propriety of the June 2012 Order. See, e.g., Barnett's Br. at 20 (containing a section titled "Improper June 6, 2012 Order re January 27, 2009").

14. On August 16, 2013, the Court entered a Minute Order ("the August 2013 Order") that expressly rejected Barnett's arguments regarding the June 2012 Order and specifically denied the following motions filed by Barnett: "(1) the Intervenor's motion to amend the May 6, 2013, order; (2) the Intervenor's motion challenging the continuing injunction; (3) the Intervenor's motion to quash the writ of execution; (4) the Intervenor's motion to discharge the writ of execution; and [5] the Intervenor's motion to strike the May 6, 2013, order."

15. On February 21, 2014, Barnett and his counsel, Douglas Short ("Short"), filed a Notice of Appeal. The Notice of Appeal states that they are appealing "all . . . prior orders, oral and written rulings, memoranda decisions, minute entries, comments, temporary restraining order(s), purported 'continuing' injunction(s), non-existent injunctions, and so forth, so as to include every single action or omission of the Court in relation to this case as it pertains in any way to Barnett or Short[.]" The Utah Supreme Court assigned the appeal to the Utah Court of Appeals.

16. Barnett and Short requested an extension of time within which to file a docketing statement, which request the Court of Appeals denied on June 25, 2014. Barnett and Short were ordered to submit the docketing statement within 15 days.

17. They apparently failed to do so. On August 6, 2014, the Utah Court of Appeals dismissed the appeal pursuant to Rule 3(a) of the Utah Rules of Appellate Procedure for failure to timely file a docketing statement.

18. Barnett and Short petitioned the Utah Supreme Court for certiorari, which petition was denied on January 12, 2015.

19. Barnett and Short then asked the Utah Court of Appeals, by motion, to reinstate the appeal, which request was denied on January 26, 2015.

20. On March 6, 2015, Barnett and Short filed another Notice of Appeal. Again, the Notice of Appeal indicates that they are appealing "all other prior orders, oral and written rulings, memoranda decisions, minute entries, comments, temporary restraining order(s), purported 'continuing' injunction(s), non-existent injunctions, findings of contempt and so forth, so as to include every single action or omission of the Court in relation to this case as it pertains in any way to Barnett or Short[.]"

21. On April 10, 2015, Short filed yet another Notice of Appeal. This Notice of Appeal is directed at every action taken by the Court "during the supplemental proceedings in this case

as may pertain in any way to the propriety of the sanctions awarded against Short[.]" This appeal was consolidated with the appeal filed on March 6, 2015.

22. On October 30, 2015, the Court held a hearing on multiple issues. During this hearing, Short informed the Court that he believed that the instant Motion, filed over three years earlier, remained outstanding. The Motion had never been fully briefed or submitted for decision. In response to Short's request, the Court set a briefing schedule on the Motion.

23. On November 1, 2015, Plaintiffs filed their opposition memorandum.

24. On November 10, 2015, Barnett filed his reply memorandum.

25. Also on November 10, 2015, Barnett filed a request to submit the Motion for Clarification that was filed back in June 2012. Barnett three days later withdrew this request to submit and then promptly filed another request to submit, after filing a reply memorandum in support of the Motion for Clarification.

26. Plaintiffs objected to Barnett's over-length reply memorandum filed in support of the Motion.

27. On November 11, 2015, Barnett filed an amended reply memorandum in support of the Motion with a corresponding motion for leave to file an over-length memorandum.

28. On November 13, 2015, Plaintiffs filed a request to submit the Motion for decision.

29. On the same day, Barnett filed a motion to stay briefing and decision on the Motion pending a ruling on the Motion for Clarification.

30. On November 18, 2015, the Court entered a Minute Entry that granted in part the Motion for Clarification. The Court ruled that

> [w]hether the [June 2012 Order] was final and appealable right then is subject to debate. While the Order was the Court's final word with regard to ownership of the Assets, there was not a final order entered with regard to the underlying dispute between Plaintiffs and GFS until March 26, 2013. At a minimum, however, it is this Court's view that the [June 2012] Order became final and appealable not later than March 26, 2013. The presence of other outstanding

writs of execution, even ones for which a motion to quash were or are pending, does not in the Court's view change the analysis.

31. In the November 18 Minute Entry, the Court also granted the Motion for Extension and set a new briefing schedule on the Motion that allowed Barnett to file a supporting memorandum in light of the Court's decision on the Motion for Clarification. The Court specifically disregarded the earlier briefs by both sides. The Court determined that Barnett's motion to stay was mooted by its rulings on the Motion for Clarification and the Motion for Extension.

32. On December 1, 2015, Barnett filed his memorandum in support of the Motion.

33. The next day, Barnett filed a declaration in support of the Motion. The day after that, Barnett filed various exhibits to his declaration.

34. On December 11, 2015, Plaintiffs filed their opposition memorandum.

35. On December 22, 2015, Barnett filed his reply memorandum.

36. The Motion is now fully briefed, but neither side has filed a request to submit. The Court, however, is unwilling to let a four year old motion remain outstanding any longer, and will now consider it.

DISCUSSION

A motion under Rule 52 of the Utah Rules of Civil Procedure seeking amendment of a court's findings must be "made not later than 14 days after entry of judgment." See Utah R. Civ. P. 52(b). Similarly, a motion under Rule 59 of the Utah Rules of Civil Procedure seeking a new trial or to alter or amend a judgment must be "served not later than 14 days after the entry of the judgment." Utah R. Civ. P. 59(b) and (c). The purpose for these time limits is to assure the finality of judgments. Holbrook v. Hodson, 466 P.2d 843, 845 (Utah 1970). Moreover, motions to alter or amend should be used "to correct manifest errors of law or to present newly discovered evidence." Comm. for First Amendment v. Campbell, 962 F.2d 1517, 1523 (10th Cir.

1992) (quotation omitted). They should not be used to "revisit issues already addressed or advance arguments that could have been raised in prior briefing." Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000); see also Exxon Shipping Co. v. Baker, 554 U.S. 471, 486, 128 S. Ct. 2605, 2617, 171 L. Ed. 2d 570 (2008) (stating that Rule 59 "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment"); In re Busch, 369 B.R. 614, 621 (B.A.P. 10th Cir. 2007) (stating that the purpose of a Rule 52(b) motion "is not to relitigate old issues or rehear the merits of a case"). When used correctly, a motion to alter or amend under either Rule 52 or Rule 59 provides a mechanism for a district court to quickly correct its own errors, thereby avoiding unnecessary appeals. See Warren v. Am. Bankers Ins. of Fl., 507 F.3d 1239, 1245 (10th Cir. 2007).

Here, Barnett filed the Motion within the time allowed by the rules, but never filed a separate supporting memorandum and never submitted the Motion for decision as required by Rule 7(g) of the Utah Rules of Civil Procedure. And while the Court understands that Barnett sought clarification of the June 2012 Order and an extension for briefing pending clarification, Barnett never submitted the Motion for Clarification or the Motion for Extension for decision until *over three years* after the motions were filed. Had Barnett filed a request to submit on the Motion for Clarification and the Motion for Extension within a reasonable time after filing the motions, Judge Kennedy would have been in a position to rule on those motions, and then adjudication of the Motion would have proceeded in due course before the judge who actually issued the June 2012 Order and who was best situated to reconsider the rulings made back in 2009 and 2012. By letting the Motion lie fallow for some four years, Barnett essentially asks this Court to sit as an appellate court and review a cold record for alleged errors of law made by a different district court judge. In the Court's view, this is the proper role of an appellate court on application through a timely notice of appeal; it is not the proper role of this Court on an obsolete

motion filed four years ago under Rule 52 or Rule 59. Cf. In re Mecham's Estate, 537 P.2d 312, 314 (Utah 1975) (stating that, generally, "one district judge of concurrent jurisdiction cannot act as an appellate judge and reverse the ruling of another").[1] The considerable time that has elapsed between when the Motion was filed and now renders the Motion stale. The proceedings that have transpired in the interim reinforce the point, and further militate against considering the Motion nearly four years after it was filed.

First, according to the record, Barnett failed to raise the Motion, the Motion for Clarification or the Motion for Extension during the hearing before Judge Kennedy on February 7, 2013, which was noticed for "ALL PENDING MOTIONS." Although the Motion for Clarification and the Motion for Extension were ripe for decision, Barnett inexplicably failed to submit them for decision, and the record does not indicate that either motion was specifically raised at all during the February 7 hearing. If Barnett really wanted the trial court to correct errors in the rulings it made in 2009 and 2012, he could have and should have asked the Court to do so in a timely fashion, and should have done so while the same judge who made those rulings and who would not be limited in his review to a cold record was still assigned to the case. Barnett did not do so, and the Court cannot escape the perception that Barnett deliberately chose not to do so.

Second, Barnett actually did file and submit a Rule 52 motion to amend the Court's May 2013 Order, which order contained very similar conclusions as those contained in the June 2012 Order. Barnett even directly challenged the June 2012 Order in this Rule 52 motion. In the August 2013 Order, Judge Kennedy expressly rejected Barnett's arguments and denied this

[1] The Court recognizes that it has the discretion to reconsider orders entered by a judge who previously managed this same calendar. See Interlake Distributors, Inc. v. Old Mill Towne, 954 P.2d 1295, 1299 (Utah Ct. App. 1998) (stating that a judge who takes over another judge's calendar shortly after a motion for new trial is filed may rule on the motion because the two judges are considered the "same judicial officer"). In this instance, however, the Court declines to exercise its discretion to undertake that reconsideration.

Rule 52 motion, specifically rejecting essentially the same arguments that Barnett makes here in connection with the instant Motion. It is clear to this Court that Judge Kennedy would have denied—and more or less did deny—the instant Motion, had it been formally and timely submitted to him for decision. It does not strike the Court as fair, or as a productive use of judicial resources, for parties to be able to lie in the weeds for four years, and then re-activate a stale motion to reconsider once a different judge is managing the docket.

Third, Barnett filed an appeal that sought review of, *inter alia*, the June 2012 Order, the May 2013 Order and the August 2013 Order. That appeal was subsequently dismissed by the appellate court for Barnett's failure to timely file a docketing statement.

Thus, Barnett had opportunities to raise the subject motions before Judge Kennedy, but did not; actually challenged the June 2012 Order and its conclusions through a subsequent Rule 52 motion that was rejected by Judge Kennedy; and sought review of the relevant orders via an appeal that was dismissed. In light of this background, the Court has no trouble concluding that the Motion has grown stale and, therefore, declines to consider it.

CONCLUSION

The Court concludes that the Motion has been rendered stale by the unreasonable delay in submitting it for decision, combined with the interim rulings by Judge Kennedy and the appellate courts. Accordingly, the Court declines to consider it, and hereby DENIES the Motion on that basis. This Ruling and Order is the order of the Court with regard to the Motion, and no further writing is necessary to effectuate this decision.

DATED this 21st day of June, 2016.

RYAN M. HARRIS
District Court Judge

10

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 070915820 by the method and on the date specified.

MAIL: GLOBAL FRAUD SOLU 3478 East Ridge Route Road Eagle Mountain, UT 84093

MANUAL EMAIL: JOHN H BOGART jbogart@telosvg.com
MANUAL EMAIL: DOUGLAS R SHORT mail@consumerlawutah.com

Date: 06/21/2016 /s/ ELSA YOUNG

Deputy Court Clerk

IN THE UTAH COURT OF APPEALS

----ooOoo----

Yan Ross and Randi Wagner, Plaintiffs and Appellees, v. Global Fraud Solutions, LLC, Defendant.	)	ORDER OF DISMISSAL Case No. 20120755-CA
Michael Barnett, Third Party Claimant.	)	
Douglas R. Short, Appellant.	)	

Before Judges Davis, Thorne, and Voros.

This case is before the court on Appellees Yan Ross and Randi Wagner's motion to dismiss Appellant Douglas R. Short's appeal for failure to file a brief. On September 4, 2012, Short appealed "the final order . . . regarding the Plaintiffs' Rule 11 motion" entered on June 29, 2012, and all prior orders entered by the district court judge assigned to consider the rule 11 motion. Short represented in his docketing statement that the appeal was taken "from a final order on a bifurcated Rule 11 Motion . . . against [Short] who is not a party to the ongoing litigation, which Rule 11 Motion was bifurcated from the ongoing case." Short's brief was due on February 19, 2013, but motions to extend the briefing time and for permission to file an overlength brief resulted in an order requiring the opening brief to be filed no later than April 30, 2013. Short did not file his brief within the time allowed by this court.

Appellees moved to dismiss the appeal with prejudice, to award them their costs and attorney fees, and to order Short to pay the monetary sanctions that are the subject of this appeal within ten days. *See* Utah R. App. P. 26(c) ("If an appellant fails to file a brief within the time provided in this rule, or within the time as may be extended by order of the appellate court, an appellee may move for dismissal of the appeal.") Because Short failed to file his opening brief within the time allowed by this court, we find merit in Appellees' motion to dismiss the appeal under rule 26(c) for failure to file a brief. However, in opposition to the motion to dismiss, Short claims that his appeal was not taken from a final appealable order and that we lack jurisdiction over the appeal. Contrary to his earlier representations to this court, Short now states that the appeal was taken from an interlocutory order imposing sanctions against him as counsel within an ongoing case against his client. Short did not file a timely petition for permission to appeal under rule 5 of the Utah Rules of Appellate Procedure; accordingly, we did not grant permission to appeal. We agree that this appeal is not taken from a final appealable order, and we therefore dismiss the appeal for lack of jurisdiction, without prejudice. Once a court determines that it lacks jurisdiction over an appeal, it "retains only the authority to dismiss the action." *Varian-Eimac, Inc. v. Lamoreaux*, 767 P.2d 569, 570 (Utah Ct. App. 1989).

IT IS HEREBY ORDERED that the appeal is dismissed without prejudice to a timely appeal taken from a final appealable order. Appellees are awarded their costs incurred on appeal pursuant to rule 34(a) of the Utah Rules of Appellate Procedure.

Dated this 10th day of June, 2013.

FOR THE COURT:

William A. Thorne Jr., Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2013, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

DOUGLAS R. SHORT
ATTORNEY AT LAW
177 E FORT UNION BLVD
MIDVALE UT 84047

JOHN H. BOGART
TELOS VENTURES GROUP
299 S MAIN ST STE 1300
SALT LAKE CITY UT 84111

THIRD DISTRICT, SALT LAKE
ATTN: AUBREE FOX & SUSAN NORBY
450 S STATE ST BX 1860
SALT LAKE CITY UT 84114-1860

Dated this June 10, 2013.

By _____
Judicial Assistant

Case No. 20120755
THIRD DISTRICT, SALT LAKE, 070915820

IN THE UTAH COURT OF APPEALS

----ooOoo----

Yan Ross and Randi Wagner, Respondents, v. Global Fraud Solutions, LLC. _____ Michael Barnett, Petitioner.	)	ORDER Case No. 20130862-CA

Before Judges Voros, Christiansen, and Greenwood.[1]

This matter is before the court on a petition for permission to appeal from an interlocutory order filed pursuant to Rule 5 of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the petition for permission to appeal is denied.

Dated this 19th day of November, 2013.

FOR THE COURT:

Michele M. Christiansen

Michele M. Christiansen, Judge

---

[1] The Honorable Pamela T. Greenwood, Senior Judge, sat by special appointment as authorized by law. *See generally* Utah Code Jud. Admin. R. 11-201(6).

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2013, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

DOUGLAS R SHORT
ATTORNEY AT LAW
177 E FORT UNION BLVD
MIDVALE UT 84047

JOHN H BOGART
TELOS VENTURES GROUP
299 S MAIN ST STE 1300
SALT LAKE CITY UT 84111

THIRD DISTRICT, SALT LAKE
ATTN: AUBREE FOX & SUSAN NORBY
450 S STATE ST BX 1860
SALT LAKE CITY UT 84114-1860

Dated this November 19, 2013.

By _____
Judicial Assistant

Case No. 20130862
THIRD DISTRICT, SALT LAKE, 070915820

IN THE SUPREME COURT OF THE STATE OF UTAH

----ooOoo----

YAN ROSS AND RANDI WAGNER, Respondents, *v.* MICHAEL BARNETT AND DOUGLAS R. SHORT, Petitioners.	ORDER Appellate Case No. 20140986-SC

----ooOoo----

This matter is before the court upon a Petition for Writ of Certiorari, filed on October 24, 2014.

The Petition for Writ of Certiorari is denied.

Respondents' request for attorney fees incurred in responding to the petition for writ of certiorari is also denied.

FOR THE COURT:

Dated Jan. 9, 2015

Thomas R. Lee
Associate Chief Justice

IN THE UTAH COURT OF APPEALS

----ooOoo----

YAN ROSS AND RANDI WAGNER,	)	
	)	ORDER OF DISMISSAL
Plaintiffs and Appellees,	)	
v.	)	Case No. 20150180-CA
	)	
GLOBAL FRAUD SOLUTIONS, LLC,	)	
	)	
Defendant.	)	
	)	
MICHAEL BARNETT,	)	
	)	
Third-party Claimant and Appellant.	)	

This matter is before the court on Appellees' motion to dismiss the appeal, filed on May 6, 2016.

On April 12, 2016, this court denied Appellants' "motion to stay appeal to determine jurisdictional issue first." The court also ordered Appellants' brief to be filed on or before May 2, 2016. The April 12, 2016 order specified that "[n]o further extensions of the time to file Appellants' brief will be allowed."

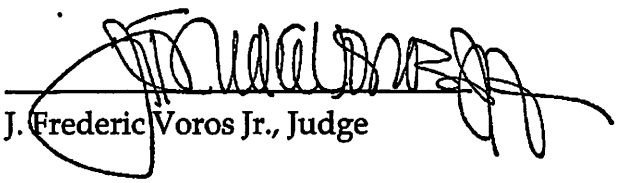
Rather than file Appellants' brief as ordered, on May 3, 2016, Appellants filed a motion for leave to bifurcate and file an overlength brief. On May 5, 2016, this court denied Appellants' May 3, 2016 motion as being untimely and out of order.

On May 6, 2016, Appellees moved this court to dismiss the appeal because Appellants' brief had not been filed as ordered by this court. On May 16, 2016, Appellants filed a cross-motion to strike Appellees' motion to dismiss and to stay further proceedings in this court. To date, Appellants have not filed their brief as ordered.

Accordingly, IT IS HEREBY ORDERED that the May 6, 2016 motion to dismiss is granted, and the appeal is dismissed. *See* Utah R. App. 3(a). IT IS FURTHER ORDERED that Appellants' cross-motion is denied as untimely and out of order.

DATED this 17th day of May, 2016.

FOR THE COURT:



J. Frederic Voros Jr., Judge

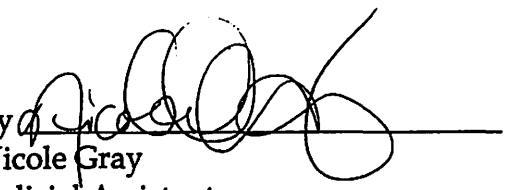
CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2016, a true and correct copy of the foregoing ORDER was sent by electronic mail to be delivered to:

DOUGLAS R SHORT
ATTORNEY AT LAW
mail@consumerlawutah.com

JOHN H BOGART
TELOS VENTURES GROUP
jbogart@telosvg.com

THIRD DISTRICT, SALT LAKE
ATTN: JULIE RIGBY AND CHERYL AIONO
cheryla@utcourts.gov, julier@utcourts.gov

By 
Nicole Gray
Judicial Assistant

Case No. 20150180
THIRD DISTRICT, SALT LAKE, 070915820

IN THE UTAH COURT OF APPEALS

---ooOoo---

YAN ROSS AND RANDI WAGNER, Plaintiffs and Appellees, *v.* GLOBAL FRAUD SOLUTIONS, LLC, Defendant.	ORDER OF DISMISSAL, ORDER DENYING MOTION TO REINSTATE APPEAL, AND ORDER DENYING MOTION TO ENLARGE TIME TO FILE PETITION FOR REHEARING
MICHAEL BARNETT, Third-party Claimant and Appellant.	Case No. 20150180-CA
Douglas R. Short Rule 11 Respondent/Appellant.	

Before Judges Orme, Voros, and Christiansen.

This matter is before the court on Appellants' Motion to Reinstate Appeal and Reconsider Single Judge Ruling and Motion to Enlarge Time to File Petition for Rehearing.

Rule 3(a) of the Utah Rules of Appellate Procedure provides that the court may dismiss an appeal for the failure of an appellant to take any step other than the timely filing of a notice of appeal. *See* Utah R. App. P. 3(a). Rule 23A of the Utah Rules of Appellate Procedure provides that an appeal dismissed for failure to take a step other than the timely filing of a notice of appeal may be reinstated by the court upon motion of the appellant for mistake, inadvertence, surprise, or excusable neglect. *See id.* R. 23A. Rule 35(a) provides that a petition for rehearing may be filed only in cases in which the court has issued an opinion, memorandum decision, or per curiam decision. No other petitions for rehearing will be considered. *See id.* R. 35(a).

On April 12, 2016, this court ordered Appellants to file their brief on or before May 2, 2016. The April 12, 2016 order specified that "no further extensions of the time to file Appellants' brief would be allowed." Appellants did not file their brief on or before May 2, 2016, as ordered. On May 3, 2016, Appellants filed a motion for leave to bifurcate and file an overlength Appellants' brief. Appellants requested additional time to file their brief. On May 5, 2016, the court denied the motion for leave to bifurcate and file an overlength Appellants' brief as being untimely and out of order.

On May 6, 2016, Appellees filed a motion to dismiss the appeal on the ground that Appellants failed to file their brief on or before May 2, 2016, as ordered by this court. On May 16, 2016, Appellants filed a cross-motion to strike Appellees' motion to dismiss and request to stay further proceedings. On May 17, 2016, the court granted Appellees' motion to dismiss the appeal. The court also denied Appellants' cross-motion as being untimely and out of order.

Appellants now request that the court reinstate the appeal pursuant to rule 23A of the Utah Rules of Appellate Procedure. Appellants fail to demonstrate mistake, inadvertence, surprise, or excusable neglect. Appellants also request that the court enlarge the time period for filing a petition for rehearing. However, a petition for rehearing may not be filed after the issuance of an order of dismissal. *See* Utah R. App. P. 35(a)

Accordingly, IT IS HEREBY ORDERED that this appeal is dismissed. IT IS FURTHER ORDERED that the motion to reinstate the appeal is denied, and the motion to enlarge the time period to file a petition for rehearing is denied. No further filings in this appeal shall be acted upon by this court. IT IS FURTHER ORDERED that Appellees' request for attorney fees is denied.

DATED this 14th day of June, 2016.

FOR THE COURT:

Michele M. Christiansen

Michele M. Christiansen, Judge

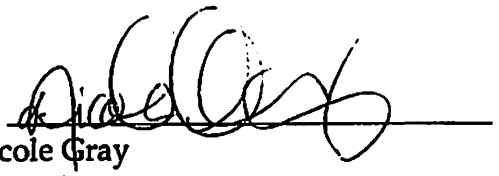
CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2016, a true and correct copy of the foregoing ORDER was sent by electronic mail to be delivered to:

DOUGLAS R SHORT
ATTORNEY AT LAW
mail@consumerlawutah.com

JOHN H BOGART
TELOS VENTURES GROUP
jbogart@telosvg.com

THIRD DISTRICT, SALT LAKE
ATTN: JULIE RIGBY AND CHERYL AIONO
cheryla@utcourts.gov, julier@utcourts.gov

By 
Nicole Gray
Judicial Assistant

Case No. 20150180
THIRD DISTRICT, SALT LAKE, 070915820

The Order of the Court is stated below:
Dated: September 28, 2016 01:48:29 PM /s/ Thomas R. Lee
Associate Chief Justice

IN THE SUPREME COURT OF THE STATE OF UTAH

----ooOoo----

Yan Ross and Randi Wagner, Respondents, v. Michael Barnett and Douglas Short, Petitioners	ORDER Appellate Case No. 20160658-SC

----ooOoo----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on August 8, 2016.

The Petition for Writ of Certiorari is denied.

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