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### Sparks v. Bare, 132 Nev. Adv. Op. 43 (Jun. 16, 2016)

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*Nevada Law Journal*

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## CRIMINAL PROCEDURE: REQUESTING TRANSCRIPTS

### **Summary**

The Court determined under NRS 189.030(1) that (1) “a misdemeanor appellant is responsible for requesting transcripts and, if not indigent, paying for those transcripts;” and (2) that “the district court has the inherent authority to dismiss a misdemeanor appeal where the appellant fails to prosecute an appeal or comply with the court’s orders.”<sup>2</sup>

### **Background**

On April 8, 2015, petitioner Lawrence Sparks appealed his municipal court misdemeanor conviction of failing to stop his vehicle at a stop sign to the district court. The municipal court transmitted the record to the district court less than ten days later, however that record did not include a transcript of the trial. In May 2015, at Sparks’s initial appeal hearing, the district court provided Sparks the contact information of a transcriptionist to prepare the municipal court transcripts for the appeal. Sparks then filed a document labeled “notice of perfection of appeal” arguing that pursuant to NRS 189.030(1),<sup>3</sup> he was not required to obtain the transcripts. After receipt of Sparks’s document, the district court advised Sparks that he was required to obtain the transcripts. When, a week later, Sparks still had not obtained the transcripts, the City of Henderson filed a motion to dismiss the appeal, which the district court granted. Sparks then sought writ requiring the municipal court to provide the transcripts, and prohibiting the district court from requiring a misdemeanor appellant to obtain and pay for transcripts. Sparks also sought a writ directing the district court to reinstate his appeal.

### **Discussion**

Sparks argued that the duty of requesting and providing transcripts lies with the municipal court, and that the district court should be prohibited from requiring him to obtain and pay for the transcripts of his appeal. First, the Nevada Constitution gives district courts final appellate jurisdiction over cases arising in the municipal court.<sup>4</sup> In an appeal such as Sparks’s, NRS 189.030(1) provides that the municipal court shall “transmit to the clerk of the district court the transcript of the case, all other papers relating to the case, and a certified copy of the docket” within ten days after the notice of appeal is filed. However, NRS 189.030 simply requires the municipal court to transmit the record; it does not require the municipal court to order preparation of transcripts that are not already part of the record. As there is no express statutory

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<sup>1</sup> By Emily Haws.

<sup>2</sup> *Sparks v. Bare*, 132 Nev. Adv. Op. 43, at \*2 (Jun. 16, 2016).

<sup>3</sup> NRS 189.030(1) provides that after a notice of appeal is filed, a municipal court has ten days to “transmit to the clerk of the district court the transcript of the case [and] all other papers relating to the case [along with] a certified copy of the docket.”

<sup>4</sup> *Tripp v. City of Sparks*, 550 P.2d 419, 419 (1976).

requirement, the district court is not prohibited from requiring the appellant to seek out the creation of those non-existing transcripts, so long as they are not indigent.

Practically, it would be difficult for the municipal court to get hearings transcribed and transmitted to the district court within the ten-day limit of NRS 189.030(1). Further, what transcripts are necessary will be determined by the issues the appellant chooses to raise on appeal, and only the appellant knows what those issues will be. Additionally, because costs of transcripts may be assessed to a non-indigent misdemeanor appellant,<sup>5</sup> it makes sense to require the appellant to designate what transcripts will be necessary for the appeal, so that they can control the cost of the appeal. Thus, the municipal court did not have a duty to order preparation of Sparks's transcripts and the district court may require a non-indigent misdemeanor appellant to obtain and pay for transcripts for a misdemeanor appeal.

Sparks also argues that the district court should decide misdemeanor appeals on the merits, and that the district court acted arbitrarily and capriciously in dismissing his appeal for failure to obtain the transcripts. The relevant statutory provisions of NRS Chapter 189 do not directly address dismissal of an appeal for failure to obtain transcripts. Such authority comes from the court's inherent authority which includes the powers "which are necessary to the exercise of all others."<sup>6</sup> A court exercising its appellate jurisdiction must be able to require timely and orderly appellate processing, with rules and sanctions that enforce those rules. Thus, the district court's inherent authority when exercising appellate jurisdiction permits the dismissal of Sparks's appeal for failure to comply with the court's orders. Specifically, Sparks's failure to obtain transcripts for the appeal hindered the court's ability to efficiently process and consider the merits of the appeal. Therefore, the district court's decision to dismiss Sparks's appeal was not founded on prejudice or preference, nor an arbitrary or capricious act.

### **Conclusion**

The Supreme Court denied Sparks's petition because under NRS 189.030(1), the district court may require a non-indigent misdemeanor appellant to provide transcripts from his municipal court hearing, and the appellant's failure to do so is grounds for dismissal.

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<sup>5</sup> See *Braham v. Fourth Judicial Dist. Court*, 747 P.2d 1390, 1392 (1987).

<sup>6</sup> *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980) (internal quotations omitted).