

APN# 1420-28-210-012



KAREN ELLISON, RECORDER

Recording Requested by/Mail to:

Name: Jennifer Magistrelli
Address: 1273 Hermosa Ct.
City/State/Zip: Minden, NV 89423

Mail Tax Statements to:

Name: _____
Address: _____
City/State/Zip: _____

Judgement / Lien Request on 1277 Hermosa Ct.
Title of Document (required) Minden, NV
89423 APN#

----- (Only use if applicable) -----

The undersigned hereby affirms that the document submitted for recording
DOES contain personal information as required by law: (check applicable)

- Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)
- Judgment – NRS 17.150(4)
- Military Discharge – NRS 419.020(2)

J Magistrelli
Signature
Jennifer Magistrelli
Printed Name

This document is being (re-)recorded to correct document # _____, and is correcting

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2021 JAN -7 PM 2:27

COUNTY OF DOUGLAS, STATE OF NEVADA

Douglas County
East Fork

[Signature]

JENNIFER MAGISTRELLI,

Plaintiff(s),

JUDGMENT AND NOTICE OF ENTRY

vs.

OF JUDGMENT

MARLENE AMBAR,

Defendant(s).

This matter came before the Court upon the *Small Claims Complaint and Affidavit* filed by Jennifer Magistrelli against Marlene Ambar on September 28, 2020. The Complaint was served as required by law. Trial was held on January 5, 2021. Both parties appeared. The court heard the testimony of Plaintiff Jennifer Magistrelli, her husband Victor Magestrelli, Defendant Marlene Ambar, and witness Dan Phillips. The Court also accepted exhibits from both parties. Ms. Magestrelli seeks to recover \$1,810.06 as reimbursement for one-half of a fence replacement, and for veterinary bills allegedly caused by Ms. Ambar's negligence. Ms. Ambar seeks a complete dismissal.

The evidence shows that the Magistrellis live at 1273 Hermosa Court ("Magistrelli house"), and that the neighboring house to the immediate south is owned by Ms. Ambar ("neighbor house"). Ms. Ambar rents the neighbor house out, and has for over 6 years. The Magestrelli house was originally owned by Mr. Magestrelli, sold, and then repurchased by the Magestrellis in or about 2016.

At all times that the Magestrellis owned the property there was a fence separating their house from the neighbor house. The original fence was built more than 25 years ago. The fence dividing the property started as a 6 foot fence before graduating down to a lower fence.

1 When the Magestrellis repurchased the home in 2016, Ms. Ambar's tenant had large
2 dogs and had used chicken wire to increase the height of the fence. It is undisputed that the
3 tenant installed the chicken wire fencing.

4 Mr. Magestrelli testified that when he bought the house in 2016, he inspected the fence.
5 His inspection showed that the fence was failing. Many boards were beginning to experience
6 dry rot, and the upright posts had to be strengthened. He testified that he made minor repairs
7 but did not discuss the failing fence with Ms. Ambar. Mr. Phillips testified that Mr. Magestrelli's
8 repairs were lacking, and that fence posts should have been completely replaced.

9 In late summer 2018, Mr. Magestrelli relocated to the Magestrelli house with their dog.
10 Shortly thereafter, in September 2018, the Magestrellis' dog and the tenant's dog got into a fight
11 through the fence. As part of this fight, the Magestrellis' dog's paw was hung up on the wire
12 fence causing him injury. The Magestrellis incurred significant veterinary bills. They now seek
13 to recover the full amount of the veterinary bill, \$581.56, from Ms. Ambar.

14 Following this incident, the local homeowner's association sent a letter to Ms. Ambar to
15 remove the chicken wire fence. Working through her property manager, the chicken wire fence
16 was removed in October 2018.

17 In January 2019, a major windstorm rocked the Carson Valley. Part of the original fence
18 between the two properties blew down. Pictures show that it was at least three panels that fell
19 over or were blown down. All parties agree that the fence was leaning prior to the wind storm.
20 Once blown over, the fence was dismantled over time by the tenant's children. Evidence also
21 shows that the blown over section of the fence had significant dry rot and broken posts. Mr.
22 Phillips testified that fence footings needed to be replaced, and that when he inspected the
23 fence with a screwdriver, his screw driver went through many boards – including boards from
24 sections of the fence that were not completely blown down. Ms. Ambar testified that good
25 boards were segregated, but there's no indication how many boards that was.

26 Mr. Phillips provided a quote for \$500 to repair the fence. He testified that this was for
27 two panels of fencing, the wood, and labor to dig new footings. He testified that he is a retired
28 adjudicator, and not a handyman. His quote is admittedly poorly written. It is not clear what his
offer included, as on its face it excludes materials.

1 The parties, terse with each other, worked towards more quotes. The Magestrellis
2 obtained quotes for replacement of the entire fence line between the two properties from
3 Florence Fence, LLC (\$3600) and Nevada Fence (\$2,457.00). Ms. Ambar obtained another
4 quote, to replace only two panels of fencing, from Finest, LLC, for \$579.25.

5 Unable to come to any type of agreement, the Magestrellis moved forward to have their
6 entire fence replaced. They now seek recovery of one-half of the cost to replace the southern
7 fence line between their house and the neighbor house, which is \$1,228.50.

8
9 **I. Ms. Ambar is not liable for injury to the Magestrellis' dog**

10 The Magestrellis seek recovery against Ms. Ambar for their dog's 2018 injuries on
11 the theory that she was negligently responsible for the dog's injuries by permitting
12 her tenants to install and maintain the chicken wire fence against HOA regulations.
13 The Magestrellis did not join or sue the tenant whose dog got into the fight with
14 their dog.

15
16 To be liable in negligence, the defendant must be more than 50% responsible for
17 the injury. The Court finds that Ms. Ambar could not be more than 50% liable for
18 the dog's injuries. The tenants (and their dog) and the Magestrellis (and their dog)
19 were at least equally responsible for the injuries.

20 Accordingly, the Magestrellis' request for their vet bill is denied in its entirety.

21
22 **II. Ms. Ambar is responsible to reimburse the Magestrellis for one-half of the**
23 **necessary replacement of their shared fence**

24
25 The Magestrellis request \$1,228.50 as reimbursement for the replacement of the
26 southern fence line. Ms. Ambar objects, claiming that no amount is due –
27 although her own evidence shows that one-half of her repair costs would be about
28 \$275.00.

1 The fence between the parties' properties is a good neighbor fence designed to
2 give both properties privacy and protection. Even before the wind storm, the fence
3 was failing including showing dry rot, needing post replacements, and starting to
4 lean. Weighing the totality of the evidence, it is clear that the entire fence line
5 needed to be repaired and replaced even before the wind storm. The storm was
6 the proverbial straw that broke the camel's back. Unfortunately, the wind storm
7 caused a portion of the fence to blow down before the parties could work together
8 to reach a mutually agreeable solution.

9 The entire length of the fence needed repairs. Considering the extensive damage,
10 it is obvious that total replacement was the only solution. Ms. Ambar's assertion
11 that only two panels needed to be replaced is without merit.

12 However, the Magestrellis did more than simply replace the original fence. Instead
13 of having the fence taper off in length, they replaced it with 6 foot boards for its
14 entire length. From the photographs, it appears that approximately 1/3 of the
15 original fence had shorter boards. The Magestrellis are only entitled to replace
16 what was actually originally there. Accordingly, there should be an adjustment
17 downward to reflect that some of the materials that the Magestrellis choose to
18 have installed exceeded the simple repair and replacement value of the original
19 fence.

20 Accordingly, Ms. Ambar is ordered to pay the Jennifer Magestrelli the sum of
21 \$1,023.75 as her contribution towards the necessary repair and replacement of
22 their shared fence.

23
24 **III. Costs and Fees of this Case Must be Assessed to Ms. Ambar**

25 Pursuant to NRS Chapter 73, the filing fees and costs of this small claims action
26 must be assessed as part of the judgment. Mrs. Magestrelli filed her
27 *Memorandum of Costs and Disbursements* showing costs of \$114.40.
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IV. Judgment

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that judgment is entered in favor of JENNIFER MAGESTRELLI and against MARLENE AMBAR in the amount of \$1,138.15 with interest at the statutory rate until paid in full.

Ms. Ambar is ordered to pay this amount in full within 30 days. If not paid in full the plaintiff may proceed to use all her legal authority to collect (or execute upon) the judgment.

In the event of an appeal, there will be no automatic stay of the judgment, and cash bond in the full amount of the judgment, must be posted with the Clerk of the Court.

Dated: 06/07/21



Judge Cassandra G. Jones

CERTIFICATE OF SERVICE

Pursuant to NRJCP 5, I certify that I am an employee of the East Fork Justice Court, Douglas County, State of Nevada, and that on the 7th day of January, 2021, a copy of the attached *Judgment and Notice of Entry of Judgment*, was mailed by U.S.P.S. Mail at Minden, Nevada to the following:

Jennifer Magistrelli
1273 Hermosa Ct.
Minden, NV 89423

Marlene Ambar
224 Forest Hill Way
Gardnerville, NV 89460

Dated this 7th day of January, 2021.

Georgianne Hayes

Judicial Executive Assistant

The Document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

2/8/21
Date: Clerk of the East Fork Justice Court
County of Douglas, State of Nevada
(Seal)

By: *[Signature]*

Deputy Clerk