

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

UNITED SERVICES AUTOMOBILE
ASSOCIATION,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
NADIA KRALL, DISTRICT JUDGE,

Respondents,

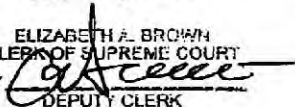
and

JOHN ROBERTS,
Real Party in Interest.

No. 83355-COA

FILED

SEP 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DIRECTING ANSWER AND GRANTING STAY

This original petition for a writ of mandamus or prohibition challenges a district court's pretrial order affirming and adopting the discovery commissioner's report and recommendations compelling certain discovery. Petitioner has filed an emergency motion for a stay of the district court's order, and real party in interest has filed an opposition. *See* NRAP 8; NRAP 27.

Having reviewed the petition and supporting documents, we conclude that an answer may assist this court in resolving the petition. Therefore, real party in interest, on behalf of respondents, shall have 28 days from the date of this order within which to file and serve an answer, including authorities, against issuance of the requested writ. NRAP

21(b)(1). Petitioner shall have 14 days from service of the answer to file and serve any reply.

Real party in interest, in his opposition to the stay motion, initially argues that this motion fails to conform to NRAP 8(a)(2)(A) because petitioner did not first move for a stay in the district court. But, as petitioner argues, it appears that moving for a stay in the district court would be impracticable because, after petitioner stated at a hearing that it would file a motion for stay, the district court ordered discovery “within 10 days, no matter what motion is on calendar or what appeal or writ you file.” See NRAP 8(a)(2)(A). Accordingly, we will consider the stay motion’s merits.

When deciding whether to grant a stay pending our consideration of a writ petition, this court will generally consider the following factors: (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether petitioner is likely to prevail on the merits of the writ petition. NRAP 8(c); see also *Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

On the first factor, petitioner argues that the object of the petition will be defeated if the stay is denied, as it is challenging the district court’s order compelling discovery without making proper findings on relevance and proportionality, and without a stay, it will be required to produce that allegedly unwarranted discovery regardless. Real party in interest does not argue this point. On the second factor, petitioner argues that it will suffer irreparable or serious injury if the stay is denied, as it is

being ordered to produce voluminous corporate documents, and it will lose a chance for appellate review of the discovery order. Real party in interest argues that the mere cost of discovery is not irreparable harm under *Hansen*. Further, he argues that petitioner has a chance for appellate review, as the argument has been preserved for appeal. Petitioner does not raise an argument as to whether real party in interest is likely to suffer irreparable or serious injury if a stay is granted, and real party in interest only argues that he would suffer injury because “justice delayed is justice denied.”


As for the fourth factor, petitioner does not specifically argue the likelihood of success on the merits of the petition, merely pointing to our decision in *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 224-29, 467 P.3d 1, 5-8 (Ct. App. 2020), which held that the district court must consider the factors enumerated in NRCP 26(b)(1) and make findings related thereto. Real party in interest argues that there is little likelihood of success on the merits, because the discovery commissioner’s findings, and the amount of discovery ordered, show that proportionality was considered by the discovery commissioner.

The first and second NRAP 8(c) factors militate in favor of a stay. The object of the petition will be defeated without a stay, and it appears petitioner may suffer irreparable harm if ordered to produce voluminous corporate documents without a finding as to the proportionality or relevance, as corporate documents could contain confidential or proprietary information. In regard to the third factor, the appellate courts have previously recognized that “mere delay in pursuing discovery and litigation normally does not constitute irreparable harm.” *Mikohn Gaming*

Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). Accordingly, this factor does not militate against granting a stay. While petitioner failed to argue the probability of success on the merits, it has “present[ed] a substantial case on the merits when a serious legal question is involved.” *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (holding that “when moving for a stay pending an appeal or writ proceedings, a movant does not always have to show a probability of success on the merits”). Accordingly, we grant the motion and hereby stay the district court’s order compelling discovery pending further order of this court.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Nadia Krall, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
The Schnitzer Law Firm
Eighth District Court Clerk