

In the Supreme Court of Nevada

ELAINE P. WYNN, an individual,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT of the State of Nevada, in and
for the County of Clark; and THE
HONORABLE ELIZABETH GONZALEZ,
District Judge,

Respondents,

and

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Real Party in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

District Court
No. A-12-656710-B

**REPLY BRIEF ON PETITIONER’S MOTION
TO VOLUNTARILY DISMISS WRIT PETITION**

Ms. Wynn seeks to withdraw her petition, a course the district court thinks is appropriate. Wynn Resorts now makes clear that it opposes Ms. Wynn’s voluntary withdrawal of her petition as a “strategic maneuver” to prevent her from conducting discovery or bringing her claims to trial in the district court. The petition is moot and should be dismissed.

A. The Petition is Moot

Ms. Wynn asserted privileges under federal whistleblower laws. When the district court overruled her privileges, Ms. Wynn petitioned this Court for review of that order and to stay enforcement pending resolution of her writ. Ms. Wynn has now elected to withdraw her petition, making the petition moot.

B. Ms. Wynn Will Not Later Raise the “Same Claims of Retaliation”

Contrary to what Wynn Resorts argues, dismissal of Ms. Wynn’s writ petition will not leave her free to raise “the same claims” of privilege that were overruled by the district court. Once the petition is dismissed, Ms. Wynn acknowledges that she will be bound by the district court’s order from which she sought a writ. The “conditions” for dismissal sought by Wynn Resorts, however, go far beyond the scope of the district court’s order and essentially ask this Court to provide an advisory ruling on *any* privilege issues that might arise in the district court in the future. (*See* Ex. 2 to Wynn Resorts’ Response to Motion to Vacate Stay, at 2.) The district court did not hold that Ms. Wynn could *never* claim whistleblower protections of any kind—in this proceeding or any

other.¹ It may in fact be unconscionable for Ms. Wynn to so agree. The hypothetical redress that might be available for Wynn Resorts' actions apart from the discovery orders challenged in the petition are not before this Court, and the legal issues as applied to the discovery orders in *this* case are moot.

C. If the Court wants to Resolve the Abstract Legal Issues, it Can Do So without Detaining the District Court

Because Ms. Wynn no longer seeks review of the orders that precipitated this writ petition, it is not necessary or appropriate to decide the scope of Sarbanes-Oxley and Dodd-Frank whistleblower protections in the abstract. But if this Court believes the petition presents the broader issue of whether Ms. Wynn could ever qualify as a whistleblower in any proceeding, including federal courts and agencies, Ms. Wynn will proceed to argue the petition. As Ms. Wynn pointed out in the reply to Wynn Resorts' notice of intent, the legal positions Ms. Wynn advocates are still correct, even if moot in their current application. Certain-

¹ Ms. Wynn has never objected to paying Wynn Resorts' reasonable NRAP 39(c) costs for the preparation of its answer, limited to \$500 (*see* NRAP 39(c)(5)). And Ms. Wynn agrees that the dismissal is without prejudice to Wynn Resorts, but it is inappropriate to speculate that Wynn Resorts may have claims for damages or attorney's fees.

ly if Wynn Resorts wants the dismissal of the petition to strip Ms. Wynn of all future whistleblower protections no matter the circumstances and no matter what retaliation Wynn Resorts seeks to inflict, then this Court can correct that misimpression.

If the Court takes this approach, it should still vacate the stay of the actual discovery orders to allow the district-court proceedings to go forward. Those orders related to Ms. Wynn's assertion of privilege on two narrow topics—a letter and phone call to Wynn Resorts' independent auditors. (1 App. 80.) With Ms. Wynn's agreement to submit to those orders, discovery can resume in the district court even if this Court retains the petition to issue an advisory opinion on the scope of the whistleblower privilege.

CONCLUSION

This Court should dismiss the petition as moot, without conditions. In the alternative, if this Court decides to hear the petition on the merits, it should grant Ms. Wynn's separate motion to vacate the stay so discovery can resume in the district court.

Dated this 14th day of July, 2017.

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CERTIFICATE OF SERVICE

I certify that on July 14, 2017, I submitted the foregoing REPLY BRIEF ON PETITIONER'S MOTION TO VOLUNTARILY DISMISS WRIT PETITION for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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