

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

Case No.: 75095

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Elizabeth A. Brown
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Appeal from the Eighth Judicial District
Court, the Honorable Jim Crockett
Presiding

REPLY IN SUPPORT OF
EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)

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I. INTRODUCTION

In its motion, the Coroner outlined the NRAP 8(c) factors and demonstrated that it is entitled to a stay of the District Court's \$32,377.52 award of attorney fees and costs to LVRJ. Nevertheless, LVRJ offers lengthy arguments in its opposition but misses several important points that justify this Court granting the Coroner's requested stay relief: (1) the District Court has already stayed its order requiring the disclosure of confidential juvenile autopsy records; (2) the purpose of a stay is to maintain the status quo, not the "status quo ante"; (3) *Nelson v. Heer* confirms that the Coroner is entitled to a stay pending appeal; (4) LVRJ admits that it will not suffer any irreparable harm; (5) LVRJ's argument that the Coroner has not presented a "serious legal question" ignores the record; (6) public interest is not a relevant factor for a stay under NRAP 8(c); and (7) LVRJ cannot seek additional remedies for failure to file a cross-appeal. For these reasons, the Coroner respectfully requests that this Court stay LVRJ's \$32,377.52 award of attorney fees and costs, without the requirement of a bond.

II. LEGAL ARGUMENT

A. THE DISTRICT COURT HAS ALREADY STAYED ITS ORDER REQUIRING THE DISCLOSURE OF CONFIDENTIAL JUVENILE AUTOPSY RECORDS.

In its opposition, LVRJ does not limit its arguments against a stay of the appealed attorney fees and costs order. **Exhibit 1** (attached to motion). Instead, LVRJ claims that the Coroner is not likely to prevail "in the underlying case"

because autopsy records should be treated as public records. Opp. at 2. Of course, LVRJ's opposition does not mention the confidentiality of such juvenile autopsy records. LVRJ's arguments are irrelevant to the Coroner's requested stay relief of the \$32,377.52 award of attorney fees and costs since the District Court has already stayed its order requiring the disclosure of confidential juvenile autopsy records.

Exhibit 3. Accordingly, the Court should disregard LVRJ's argument against a stay that the District Court has already entered.

B. THE PURPOSE OF A STAY IS TO MAINTAIN THE STATUS QUO, NOT THE "STATUS QUO ANTE."

The Coroner has directed this Court to case law explaining that the purpose of a stay pending appeal is to maintain the status quo. Mot. at 5. LVRJ does not meaningfully challenge that this Court's stay would, in fact, maintain the status quo. Instead, LVRJ argues that this Court should "return to the status quo ante." Opp. at 1. But, the legal definition of the "status quo" is "[t]he situation that currently exists." BLACK'S LAW DICTIONARY, 1632 (10th ed. 2014). Therefore, the Court should not be persuaded by LVRJ's argument that the status quo means something other than the current situation.

C. NELSON v. HEER CONFIRMS THAT THE CORONER IS ENTITLED TO A STAY PENDING APPEAL.

In its opposition, LVRJ largely avoids *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005). *Nelson* recognized, "Most federal courts interpreting the rule generally recognize that FRCP 62(d) allows an appellant to obtain a stay pending

appeal **as of right** upon the posting of a supersedeas bond for the full judgment amount....” *Id.*, 121 Nev. at 834, 122 P.3d at 1253 (emphasis added). Since the Coroner is deemed secured, according to NRCP 62(e) and NRS 20.040(1), it is entitled to a stay from LVRJ’s monetary award. LVRJ retreats from this Court’s statement in *Nelson* and instead argues contrary federal authority. Opp. at 8–10. Avoiding the language of *Nelson*, LVRJ focuses on “irreparable harm” and claims that monetary judgments can never amount to irreparable harm. Opp. at 11–12. LVRJ also erroneously suggests that this Court is powerless to review the District Court’s refusal to apply NRCP 62(e), but says nothing of NRS 20.040(1). On all accounts, LVRJ is wrong, as this Court recognized in the very language of *Nelson* that LVRJ avoids.

D. LVRJ ADMITS THAT IT WILL NOT SUFFER ANY IRREPARABLE HARM.

LVRJ again admits in its opposition that it will not suffer any irreparable harm if a stay pending appeal is granted. Opp. at 12 n.6. LVRJ also admits that it will not be prejudiced as a judgment creditor, according to the test in *Nelson*, particularly because the Coroner is part of a municipality with a budget of over “six billion dollars.” Opp. at 1, 7–8. Given LVRJ’s absolute certainty that it will be paid if the judgment is affirmed, this Court should reject LVRJ’s bare argument that the status quo should not be maintained. Opp. at 8. Although LVRJ admittedly will not be harmed, it refuses to concede a stay.

E. LVRJ’S ARGUMENT THAT THE CORONER HAS NOT PRESENTED A “SERIOUS LEGAL QUESTION” IGNORES THE RECORD.

LVRJ emphasizes its own legal position with regard to the award of attorney fees and costs. Opp. at 12–16. Despite the differing interpretations of the same legal issue, LVRJ avoids the contrary order (**Exhibit 9**) and claims that it is “not binding precedent.” Opp. at 2. The Coroner directed this Court to the differing interpretation of the same legal issue to demonstrate “a substantial case on the merits when a serious legal question is involved....” *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 658, 6 P.3d 982, 987 (2000). As such, LVRJ cannot overcome the existence of a bona fide dispute just because it avoids the opposing position.

F. PUBLIC INTEREST IS NOT A RELEVANT FACTOR FOR A STAY UNDER NRAP 8(c).

LVRJ cannot point to any language within NRAP 8(c) that requires this Court to consider LVRJ’s self-serving version of the “public interest.” Predictably, LVRJ relies upon federal case law for its public interest argument that has no cognate in Nevada. Opp. at 5–7. LVRJ also attempts to raise for the first time on appeal selected legislative history from NRS Chapter 239 to support its “public interest” arguments, which were not included in its District Court opposition to stay. Opp. at 14–16; **Exhibit 11**. Not surprisingly, LVRJ chooses not to acknowledge the Coroner’s position that the requested juvenile autopsy records are confidential. **Exhibit 4**.

G. LVRJ CANNOT SEEK ADDITIONAL REMEDIES FOR FAILURE TO FILE A CROSS-APPEAL.

LVRJ finally argues that its appealed award of attorney fees and costs should now include an award of legal interest. Opp. at 16–17. LVRJ first requested legal interest after the District Court had already been divested of jurisdiction, and the District Court did not grant LVRJ this additional remedy. *See Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529–530 (2006); **Exhibits 1&11**. So, LVRJ cannot seek to expand its rights in the judgment for failure to file a cross-appeal. *See Ford v. Showboat Operating Co.*, 110 Nev. 752, 755–756, 877 P.2d 546, 548–549 (1994).

III. CONCLUSION

For the foregoing reasons and those outlined in the Coroner’s motion, this Court should enter a stay pending appeal of LVRJ’s \$32,377.52 award of attorney fees and costs, without the requirement of a bond.

Dated this 28th day of March, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)** was filed electronically with the Nevada Supreme Court on the 28th day of March, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Margaret A. McLetchie, Esq.
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