

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; JAMES DZURENDA,
DIRECTOR OF THE NEVADA
DEPARTMENT OF CORRECTIONS;
IHSAN AZZAM, PH.D., M.D., CHIEF
MEDICAL OFFICER OF THE STATE
OF NEVADA IN HIS OFFICIAL
CAPACITY; AND JOHN DOE,
ATTENDING PHYSICIAN AT
PLANNED EXECUTION OF SCOTT
RAYMOND DOZIER IN HIS OFFICIAL
CAPACITY,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
Respondents,
and
ALVOGEN, INC.; AND HIKMA
PHARMACEUTICALS USA, INC.,
Real Parties in Interest.

No. 76485

FILED

AUG 16 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING STAY AND SCHEDULING ORAL ARGUMENT

In the context of this original petition to dissolve a stay of execution and for a writ of mandamus or prohibition, which challenges a district court temporary restraining order precluding petitioners from using a certain drug in executions, petitioners have moved to stay the district

court proceedings pending resolution of this petition. On August 8, 2018, this court entered a temporary stay, pending our receipt and consideration of real parties in interest's oppositions to the stay motion. Real parties in interest timely filed oppositions, real party in interest Alvogen, Inc., filed a countermotion to dismiss, and petitioners filed a reply/opposition. In addition, Sandoz Inc., the manufacturer of one of the drugs scheduled to be used in the execution protocol, has moved for leave to participate as amicus curiae in favor of real parties in interest, the other drug manufacturers and plaintiffs below.

Sandoz's motion for leave to participate as amicus curiae is granted; the clerk of this court shall detach from its August 13, 2018, motion and file the proposed opposition to petitioners' motion for stay. NRAP 29. Any amicus brief in support of real parties in interest's answers to the petition must be filed and served by 4:00 p.m. on Tuesday, August 21, 2018.¹

Further, having considered the parties' and amicus curiae's briefing on the stay motion, we conclude that a stay is not warranted. In determining whether to grant a stay pending resolution of a writ petition, this court considers the following factors: (1) whether the object of the petition will be defeated if the stay is not granted, (2) whether petitioners will suffer irreparable or serious injury if the stay is denied, (3) whether

¹No extensions of time will be granted. For purposes of this order, we suspend the provisions of NRAP 25(a)(2)(B)(ii), (iii), and (iv), which provide that a document is timely filed if, on or before its due date, it is mailed to this court, dispatched for delivery by a third party commercial carrier, or deposited in the Supreme Court drop box. See NRAP 2. Accordingly, Sandoz's amicus brief shall be filed personally or by facsimile or electronic transmission with the clerk of this court in Carson City.

real parties in interest will suffer irreparable or serious injury if the stay is granted, and (4) whether petitioners are likely to prevail on the merits of the petition. NRAP 8(c); *see also Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 6 P.3d 982 (2000). Petitioners have not demonstrated that these factors militate in favor of a stay at this time.

First, the object of the writ petition is twofold. The State argues that the TRO should be dissolved both because it amounts to an improper stay of execution in violation of NRS 176.415 and because no law allows the drug manufacturers to retain rights over its distributed products. The State maintains that these issues are purely legal questions not requiring discovery. Alvogen argues that these issues raise factual questions and notes that the State favored discovery in the district court. Allowing discovery and other matters to proceed below will not itself defeat the ultimate object of the petition, as this court could still vacate the TRO if a stay is not granted. Moreover, while both petitioners and real parties in interest point to litigation expenses, efforts, and delays, none of these concerns amounts to irreparable harm or serious injury sufficient to warrant a stay. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004); *Fritz Hansen A/S*, 116 Nev. at 658, 6 P.3d at 986–87. Further, we do not perceive irreparable harm to the State or Alvogen resulting in a denial of the stay. Finally, while we agree that petitioners raise legal issues of substantial import, we cannot conclude that this alone warrants a stay of the proceedings below. The parties are not the only ones whose interests are affected by this matter—the district court’s TRO and any stay of the proceedings below further delay resolution of the case of Scott Raymond Dozier, the victim’s family and loved ones, and the public

interest in general. These interests are promoted by allowing all proceedings to move forward as expeditiously as possible.² Accordingly, we deny the motion for stay and hereby vacate the temporary stay imposed on August 8, 2018.

However, we deny Alvogen's countermotion to dismiss. We have determined that oral argument may be of assistance in resolving this matter. Therefore, the clerk of this court shall schedule this matter for oral argument on September 12, 2018, at 2:00 p.m. in Las Vegas. The argument shall be limited to 30 minutes.

It is so ORDERED.³

Hardesty, J.
Hardesty

We concur:

Cherry, J.
Cherry

Parraguirre, J.
Parraguirre

²Indeed, we note that the district court has offered to accelerate the preliminary injunction hearing.

³The Honorable Kristina Pickering, Justice, voluntarily recused herself from participation in the decision of this matter. The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.

STIGLICH, J., with whom Douglas, C.J. agrees, concurring in part and dissenting in part:

This case presents important questions of first impression in Nevada and throughout the country. The State petitioners not only suggest that the temporary restraining order was improperly issued in a manner that unlawfully resulted in a stay of execution, but strongly argue that real parties in interest lack any valid cause of action on which to base such a restraint. If petitioners are correct, the entire district court case would be impacted and likely negated.

Under these circumstances, I see no reason why a stay should not issue to halt proceedings until this court has had the opportunity to decide this matter. Briefing will soon be completed, and we have already agreed to expedite our consideration of the petition. As the majority notes, no party has demonstrated any harm by what would in all probability amount to a short stay of proceedings, and the parties, judicial economy, and the outside interests at stake may well be served by allowing this court to consider the writ petition and decide the issues raised before the district court proceeds any further on the case. *See, e.g., In re Lombardi*, 741 F.3d 888, 896 (8th Cir. 2014) (cautioning against allowing sensitive discovery on the basis of an inadequately pleaded claim); *Jones v. Comm'r, Georgia Dep't of Corr.*, 812 F.3d 923, 925 (11th Cir. 2016) (Marcus, J., concurring) (noting that one must state a plausible claim before becoming entitled to discovery). Consequently, while I agree with scheduling oral argument in this matter

and the majority's disposition of the other pending motions, I dissent as to the majority's decision to deny the requested stay.

Stiglich, J.
Stiglich

I concur:

Douglas, C.J.
Douglas

cc: Hon. Elizabeth Goff Gonzalez, Chief Judge
Attorney General/Carson City
Attorney General/Las Vegas
Latham & Watkins LLP/Chicago
Latham & Watkins LLP/Washington DC
Lewis Roca Rothgerber Christie LLP/Las Vegas
Lewis Roca Rothgerber Christie LLP/Reno
Pisanelli Bice, PLLC
O'Mara Law Firm, P.C.
Campbell & Williams
Clark County District Attorney
Eighth District Court Clerk