Case No. 78243

In the Supreme Court of Nevada

GARY LEWIS,

Petitioner,

vs.

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

Respondents,

and

UNITED AUTOMOBILE INSURANCE COMPANY, and CHEYANNE NALDER,

Real Parties in Interest.

District Court Case Nos.
A549111 & A772220

UNITED AUTOMOBILE INSURANCE COMPANY'S ANSWER

With Supporting Points and Authorities

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Real party in interest United Automobile Insurance Company (UAIC) is a privately held limited-liability company. No publicly traded company owns more than 10% of its stock.

UAIC is represented by Thomas E. Winner and Matthew J. Douglas at Atkin Winner & Sherrod, and by Daniel F. Polsenberg, Joel D. Henriod, and Abraham G. Smith at Lewis Roca Rothgerber Christie, LLP.

Dated this 10th day of July, 2019.

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INTRODUCTION

In an impressive variety of ways, petitioner Gary Lewis asks this Court to eschew the logical and embrace the surreal.

One might think that two actions in which plaintiff Cheyanne Nalder is seeking the same relief—even by filing the same briefs—are ideal candidates for consolidation. No, Lewis says: that one of the actions has a decade-old judgment (its expiration or revival is the critical issue in both cases) makes consolidation impossible; the actions must proceed in parallel, but separate spheres.

One might also think that notice of a motion to consolidate and the opportunity to oppose it (which Lewis did) satisfy due process. No, Lewis says: the submission of the motion for an order shortening time gave the Court too much time and Lewis and Nalder too little time with it, transforming a common practice into an improper *ex parte* rendezvous.

One might also think that a district court could expect its oral ruling granting a stay to be obeyed, and that when the clerk mistakenly entered a judgment in violation of that stay, that the district court could promptly vacate the judgment as a clerical error. But again no, Lewis

says: the parties are free to disregard a court's oral stay until the written order, and the court is powerless to do anything about it. What's more, Lewis says, even though a court can vacate a judgment *sua sponte*, it can do so only after notice and a hearing; in the meantime, the erroneous judgment must stay in place.

That the district court in each instance chose the reasonable and not the inexplicable path is not an emergency calling for this Court's extraordinary intervention. It is a relief.

ROUTING STATEMENT

Although UAIC disagrees with petitioners' characterizations about the record, UAIC agrees that it makes sense for the Supreme Court to retain the petition because of its familiarity with the issues in the certified question, Docket No. 70504.

ISSUES PRESENTED

1. When a plaintiff attempts to revive an expired judgment in two actions—the action with the original, expired judgment, and a new action purportedly "on the judgment"—does the district court have discretion to consolidate the matters?

2. Is EDCR 2.26 constitutional?

3. Does a district court have discretion to (1) vacate *sua sponte* a judgment that was mistakenly entered by the clerk in violation of a stay and then (2) hear the parties' arguments as to why that judgment should be reinstated?

STATEMENT OF FACTS

A. The Accident

Cheyenne Nalder alleges that on July 8, 2007 Gary Lewis negligently struck her with his car. (1 R. App. 2.)[1]

B. The 2007 Lawsuit

On October 9, 2007, Nalder through her guardian ad litem filed suit against Lewis. (1 R. App. 1.) Lewis did not answer, and eight months later the district court entered a default judgment for $3.5 million. (1 R. App. 5, 6–7.)

C. The Bad-Faith Action Against UAIC

Nalder then sued Lewis's former insurer, UAIC, in federal court, based on an assignment of Lewis's rights to a claim for bad faith. (1 R. App. 231–32; 11 R. App. 2531.)

[1] "R. App." refers to real party in interest UAIC's appendix.

1. Due to an Ambiguity, the Accident Is Deemed Covered

The federal court initially granted UAIC summary judgment because at the time of the accident, Lewis had let his policy lapse. (1 R. App, 87, 99, 231–32.) The Ninth Circuit found an ambiguity in the renewal statement, however (1 R. App. 104, 11 R. App. 2547), and on remand the district court construed the ambiguity against UAIC to imply a policy covering the 2007 accident. (1 R. App. 110, 232.)

UAIC paid Nalder the $15,000 policy limits and $90,000 for her attorney's fees.

2. The Judgment Against Lewis Expires

Nalder appealed, however, because she considered the entire $3.5 million default judgment a consequential damage of UAIC's failure to defend, even though UAIC had acted in good faith. (1 R. App. 110.)

Pending that appeal, Nalder let that default judgment expire without renewing it under NRS 17.214. (1 R. App. 15.)

3. This Court Accepts Certified Questions on the Availability of Consequential Damages

The Ninth Circuit certified to this Court two questions: first, whether an insurer who mistakenly but in good faith denies coverage

can be liable for consequential damages beyond the payment of policy limits and the costs of defense; and second, whether the expiration of the judgment without renewal cuts off the right to seek, in an action against the insurer, consequential damages based on that judgment. (2 R. App. 257, 268.)

D. Nalder "Amends" the Expired Judgment in the 2007 Suit

Shortly after this Court accepted the second certified question, Nalder moved *ex parte* to "amend" the expired 2008 judgment to be in her own name rather than that of her guardian ad litem. (1 R. App. 62, 71, 74; 2 R. App. 273, 282; P. (Dkt. 78085) App. 6–7;[2] 5 R. App. 1108 (describing the amendment as "an amendment of the expired judgment").)[3]

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[2] "P. (Dkt. #) App." refers to the petitioners' appendix in the indicated docket.

[3] Coverage counsel initially moved on Lewis's behalf to vacate the amended judgment. (1 R. App. 26–28; 4 R. App. 841, 852) After the Court in a minute order granted UAIC permission to intervene (4 R. App. 839, 10 R. App. 2313) but before the entry of a written order (4 R. App. 874), Lewis, through another attorney, alleged that coverage counsel had not conferred with Lewis about the motion and moved to strike it. (1 R. App. 26–28.) Two days later, the Court entered its written order granting UAIC permission to intervene (1 R. App. 31), and UAIC was able to file its own motion to vacate the judgment (1 R. App. 35).

E. Nalder Brings a New Action Testing the Validity of the Expired Judgment

A few days later, on April 3, 2018, Nalder filed a new complaint against Lewis as a purported "action on the judgment," seeking a new $3.5 million judgment (minus $15,000 plus interest) and a declaration that the six-year limitation for bringing such an action had not expired. (10 R. App. 2299–303.)

F. UAIC Intervenes in the Pending Actions and Moves to Consolidate Them

To contest Nalder's new effort to revive the expired 2008 default judgment against its insured, UAIC moved to intervene in both actions and moved for their consolidation. (P. (Dkt. 78085) App. 8; 10 R. App. 2083; 1 R. App. 227; P. (Dkt. 78085) App. 213; 11 R. App. 2610.) The motion to intervene was properly served both by mail and by electronic service (3 R. App. 732–74), and the motion to consolidate was properly e-served (11 R. App. 2624); Nalder opposed intervention, and Lewis opposed both motions. (1 R. App. 8, 2 R. App. 310, 3 R. App. 741, 4 R. App. 754, 763, 10 R. App. 2293, 2314, 11 R. App. 2685.) Seeking to cre-

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Both Nalder and Lewis opposed the motion. (1 R. App. 78, 134.)

ate a judgment in the 2018 action, Nalder and Lewis submitted a stipulated judgment against Lewis for the full amount requested in Nalder's complaint. (3 R. App. 595, 4 R. App. 771.)

The district court granted intervention in both cases (1 R. App 31, 10 R. App. 2450),[4] and the judge in the lower-numbered 2007 case ordered the related cases consolidated (P. (Dkt. 78243) App. 2). The district court did not enter judgment on Nalder's and Lewis's stipulation. (5 R. App. 1133–34.)

G. While the Case is Stayed, Nalder and Lewis Try to Create a Judgment in the 2018 Action

On January 9, 2019, the district court orally dismissed part of Nalder's 2018 complaint and stayed the remaining proceedings. (5 R. App. 1129, 1141–42.) The district court gave no indication that the order staying proceedings was anything other than immediate; in fact, the

[4] At the time, both cases were pending before Judge David Jones in Department 29. On October 24, 2018, a week after UAIC's intervention, Judge Jones disclosed his prior work with Lewis's then-coverage counsel, Randy Tindall. (1 R. App. 76–77.) Upon objection by Nalder's counsel and a request to refer Tindall to the state bar, Judge Jones voluntarily recused himself. (1 R. App. 76–77.) (The claim against Tindall was later dismissed. (5 R. App. 1169.)) The 2007 case was eventually reassigned to Judge Eric Johnson in Department 20, who granted consolidation. (11 R. App. 2626.)

district court made it clear that it was refusing to sign Nalder's and Lewis's proposed judgment. (5 R. App. 1132–33, 7 R. App. 1664–66.) And again in a minute order on January 22, 2019, the district court granted a stay pending this Court's resolution of the certified questions. (7 R. App. 1664–66, 9 R. App. 2159.)

Yet that same day, Nalder and Lewis worked to evade the stay before a written order memorializing the then-in-effect stay could be entered (6 R. App. 1311, 1316–18[5]): Nalder served and Lewis accepted an offer of judgment for over $5 million, and they submitted the judgment to the clerk for entry. (5 R. App. 1194, 1197, 1201.) As the notice of acceptance and the clerk's entry of judgment were filed at the same minute (5 R. App. 1194, 1201), neither UAIC nor the district judge had advance notice of this judgment. UAIC moved to vacate the judgment. (5 R. App. 1176, 8 R. App. 1853.) Based on the mistake or inadvertence in the clerk's entering judgment while the case was stayed, the district court vacated the judgment. (7 R. App. 1656, 1666–67.)

[5] *See also* 9 R. App. 2002–04 (counsel's comments on the draft order, including the denial of Nalder's and Lewis's stipulation and the granting of the stay).

Nalder and Lewis complained that in vacating the judgment the district court violated their due process, and they asked the court to reinstate the judgment on grounds that the oral ruling and minute order could not restrain the parties until the entry of a written order staying the case. (6 R. App. 1328, 1487; 10 R. App 2272.) The district court denied the motions, noting that it had stayed the matter at the previous hearing, that the judgment entered by the clerk was void, and that vacating merely "put us back to where I thought I clearly had indicated I wanted us to be" at the time the district court stayed the case. (10 R. App. 2283; 7 R. App. 1656, 1666–67; 10 R. App. 2286–87.)

SUMMARY OF THE ARGUMENT

Consolidation exists for cases such as this. Nalder is trying, in two actions, to achieve a single result—the resuscitation of an expired judgment. Because that issue is pending in both actions, and the district court has jurisdiction to declare the original judgment expired, consolidation was proper.

Lewis's allegations of due process violations are fact-bound and farcical. UAIC and the district court followed the established, lawful procedure for noticing expedited motions. When Lewis and Nalder

themselves violated due process by getting the clerk to mistakenly enter a judgment in violation of a stay, the district court properly and promptly corrected the clerk's error and vacated the judgment—no notice necessary. But Lewis and Nalder in fact got their due process opportunity to argue that the judgment should be reinstated; the district court simply disagreed.

These issues do not merit this Court's extraordinary intervention.

ARGUMENT

Standard of review: "[T]he trial court is vested with a discretion to consolidate or to refuse to do so, subject to reversal in case of abuse." *Ward v. Scheeline Banking & Tr. Co.*, 54 Nev. 442, 22 P.2d 358, 360–61 (1933); *accord Zupancic v. Sierra Vista Recreation, Inc.*, 97 Nev. 187, 192–93, 625 P.2d 1177, 1180 (1981) ("Hearing and trial procedures, such as consolidation . . . are matters vested in the sound discretion of the trial court.").

While due process requires an "opportunity to be heard," *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998), in most instances the form of that opportunity is left to the district court's discretion, *see J.D. Constr. v. IBEX Int'l Group*, 126 Nev. 366, 376, 378, 240

P.3d 1033, 1040, 1041 (2010) (citing NRCP 78, which excuses "determination of motions without oral hearing"); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 611, 245 P.3d 1182, 1185 (2010) (district court has discretion to not hold an evidentiary hearing for non-case-concluding sanctions).

I.

INTERVENTION WAS PROPER

Although Lewis does not actually argue the intervention question in this petition, for all the reasons stated in UAIC's answer to the petition in Docket No. 85085, intervention was timely and substantively proper. NRCP 24(a), (b)(2). UAIC timely intervened in the 2018 action at its beginning to address the expiration of the judgment that Nalder was trying to enforce; that case has not proceeded to a trial or judgment. And UAIC timely intervened to defend the same position in the 2007 action, where the only "judgment" had long expired, and plaintiff's bid to revive that judgment is a pending question.

II.

CONSOLIDATION OF PLAINTIFF'S PARALLEL ACTIONS TO REVIVE AN EXPIRED JUDGMENT WAS PERMISSIBLE

The district court properly exercised its discretion to consolidate two pending actions: Nalder's efforts to litigate the renewal of her 2008 judgment in that original action and in the 2018 action "on the judgment." No rule or case supports Lewis's contention that an expired judgment in one of the actions thwarts consolidation. And contrary to Lewis's suggestion, on the pending question of the expired judgment's validity, the two actions are at precisely the same procedural posture.

A. Questions Remain Pending in Both Actions

1. NRCP 42(a) Allows Consolidation of Any "Pending" Action

Like its federal counterpart, NRCP 42(a) allows a court to consolidate any "actions involving a common question of law or fact . . . pending before the court."[6]

The rule does not draw a line between cases in which there is a judgment and those in which there is not. The common question must

[6] UAIC refers to the rules in effect as of the time of consolidation in 2018.

merely be "pending"—that is, the district court must in some sense retain jurisdiction over the issue. *See Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010) (describing the district court's jurisdiction during appeal as extending to pending "matters that are collateral to and independent from the appealed order" (quoting *Mack–Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529–30 (2006))).

In *Payne v. Tri-State Careflight, LLC*, for example, the district court entered a final judgment but then granted motions to intervene, "restocking this case's docket with sixty-nine fresh named Plaintiffs." 327 F.R.D. 433, 451–53 (D.N.M. 2018). Despite the final judgment, there was "enough life in the case" in the form of prospective Rule 59 or Rule 60 motions to justify consolidation. *Id.* *See generally Earl v. Lefferts*, 1800 WL 2341, 1 Johns. Cas. 395, 395 (N.Y. Sup. Ct. 1800) (an example of post-judgment consolidation dating from the Eighteenth Century).

2. The District Court Retains Jurisdiction to Decide Whether a Judgment Is Void Because It Has Expired

The district court always retains jurisdiction to address a collateral attack on a void judgment. *Rawson v. Ninth Judicial Dist. Court*,

133 Nev., Adv. Op. 44, 396 P.3d 842, 848 & n.4 (2017); NRCP 60(b)(4). That includes a judgment that has expired without renewal under NRS 17.143. *Leven v. Frey*, 123 Nev. 399, 410, 168 P.3d 712, 719 (2007).

3. Nalder's Attempt to Litigate the Validity of the Expired 2008 Judgment Is a "Pending" Question

Here, the district court has jurisdiction to adjudicate Nalder's attempt to revive the expired 2008 judgment—and UAIC's motion to vacate it as void—both in that action and in the 2018 lawsuit seeking the same relief. As that identical question of the expired judgment's validity is pending in both actions, the district court properly consolidated them.

B. On the Pending Question, the Two Cases Are in the Same Procedural Posture

Not only is consolidation procedurally proper, but it makes substantive sense. Nalder seeks "the identical relief" from each action. *Ward*, 54 Nev. 442, 22 P.2d at 360. Many of the same briefs had already been filed in both actions; leaving the cases separate (especially when, after Judge Jones's recusal, the two cases split to different departments) would have merely duplicated the work for two district judges and risked coming to inconsistent answers on the same pivotal

legal questions. Denying consolidation would have been an abuse of discretion.

Lewis instead cites inapposite cases dealing with actions "at different stages of pretrial preparation." (Pet'n 30 (citing *Prudential Ins. Co. of Am. v. Marine Nat'l Exch. Bank*, 55 F.R.D. 436 (E.D. Wis. 1972).) A judge does not abuse its discretion in consolidating cases merely because of that disparity.[7] The general principles stated in cases such as *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984) (cited at Pet'n 31) *support* consolidation here, "weigh[ing] the saving of time and effort

[7] *Wolfe v. Hobson*, 2018 WL 6181404 (S.D. Ind. 2018); *Fabric Selection, Inc. v. Topson Downs of Cal., Inc.*, 2018 WL 3917758 (C.D. Cal. 2018) (even though one action would be delayed, the "similarity in facts and evidence" produced overall judicial economy justifying consolidation); *Bedwell v. Braztech Int'l, L.C.*, 2018 WL 830073 (S.D. Fla. 2018); *Brook v. Sterling Testing Systems, Inc.*, 2013 WL 2155478 (M.D. Tenn. 2013); *Ashcroft v. N.Y. Dep't of Corr. Servs.*, 2009 WL 1161480 (W.D.N.Y. 2009); *Dennis v. EG&G Defense Materials, Inc.*, 2009 WL 250396 (D. Utah 2009); *Single Chip Sys. Corp. v. Intermec IP Corp.*, 495 F. Supp. 2d 1052 (D.C. Cal. 2007); *Blasko v. Wash. Metro. Area Trans. Auth.*, 243 F.R.D. 13 (D.D.C. 2007); *Internet Law Library, Inc. v. Southridge Capital Mgmt.*, 208 F.R.D. 59 (S.D.N.Y. 2002); *B.D. ex rel. Jean Doe v. DeBuono*, 193 F.R.D. 117 (S.D.N.Y. 2000), *Monzo v. Am. Airlines, Inc.*, 94 F.R.D. 672 (S.D.N.Y. 1982); *Rohm & Haas Co. v. Mobil Oil Corp.*, 525 F. Supp. 1298 (D. Del. 1981).

consolidation would produce against any inconvenience, delay, or expense."[8] The relevant procedural posture here is how far developed is the question of the judgment's expiration that is central to both actions: *that* question is identically postured in both actions.

C. Lewis Is Not Forcibly Realigned with UAIC

Nor does consolidation forcibly realign the parties against their interests. Although UAIC remains suspect of Lewis's efforts to have a judgment entered against him, nothing about the consolidation order forbids him from maintaining that posture. Lewis cites *Dupont v. Southern Pacific Co.*, but the problem there was the court's appointing one counsel to represent *all* plaintiffs, effectively forcing plaintiffs to forgo some of the claims that they would have had against each other. 366 F.2d 193, 196–97 (5th Cir. 1966). Nothing like that is happening here. Lewis has separate counsel from UAIC, and he is electing to take positions contrary to UAIC.

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[8] *Huene* came to a different result on rehearing, 753 F.2d 1081 (9th Cir. 1984) and has been overruled by *Hall v. Hall*, 138 S. Ct. 1118 (2018). *See generally In re Estate of Sarge*, 134 Nev., Adv. Op. 105, 432 P.3d 718, 720 (2018) (adopting *Hall*'s rule that the constituent cases of a consolidated action are independently appealable).

III.

THE COURT'S ORDERS WERE ENTERED IN ACCORDANCE WITH DUE PROCESS

Lewis's due process objection bewilders. Either Lewis misunderstands conventions of motion practice in the Eighth Judicial District, or he sincerely believes them to be unconstitutional without making that showing.

A. EDCR 2.26 Is Constitutional

1. Ministerial Scheduling Motions Can Be Granted Ex Parte

A judge can grant ministerial or scheduling requests (motions "of course") on an ex parte basis, while "substantive matters or issues on the merits" ("special" motions) involve judicial discretion and must be noticed to opposing parties. *Crawford v. State*, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001) (citing NCJC Canon 3(B)(7)(a)), *abrogated on other grounds by Stevenson v. State*, 131 Nev. Adv. Op. 61, 354 P.3d 1277 (2015); *Maheu v. Eighth Judicial Dist. Court*, 88 Nev. 26, 34, 493 P.2d 709, 714 (1972).

2. EDCR 2.26 Lawfully Allows Ex Parte Orders Shortening Time

EDCR 2.26 properly allows *ex parte* motions for the ministerial issue of shortening the time for calendaring a substantive motion. The process is familiar to anyone who practices in the Eighth Judicial District. A party may submit a declaration asking the court for good cause to expedite the resolution of the party's motion. EDCR 2.26. The underlying motion is usually attached to the declaration, but the district judge signs only the order shortening time. The party then serves and files the motion and the order shortening time, which notifies the opposing party of the expedited timeline for decision.

B. The Parties Had Proper Notice of the Motion to Consolidate

UAIC properly followed the procedure under EDCR 2.26 for filing its consolidation motion on an order shortening time.

1. UAIC Served All Parties

Although UAIC had prepared the motion in early November, the Court did not sign the order shortening time until November 21, 2018, and UAIC filed and served the motion on all parties on November 26. (11 R. App. 2595, 2596, 2609.) Interpreting this five-day period in the

worst possible light, Lewis forgets that Thursday, November 22 was Thanksgiving Day. Monday, November 26 was, for most people, the next business day after November 21.

2. Lewis Opposed the Motion

Lewis opposed the motion. (2 R. App. 310, 11 R. App. 2670.) Because he was actually heard on the motion before the district court ruled, there was no violation of Lewis's due process rights.

3. Lewis Lacks Standing to Assert Nalder's Due Process Rights

When it comes to the due process right of notice and an opportunity to be heard, a party does not have standing to assert a violation of someone else's due process. *Hewitt v. Glaser Land & Livestock Co.*, 97 Nev. 207, 209, 626 P.2d 268, 269 (1981).

Here, Lewis actually had that opportunity and cannot complain about an alleged violation of Nalder's due process rights.

4. Nalder Had Notice and an Opportunity to Oppose

Besides, Nalder was not deprived of due process. She had more than a full judicial day to oppose the motion, as EDCR 2.26 requires.

And while she did not take that opportunity, she benefitted from the arguments that Lewis made in opposition.

C. A Court Can *Sua Sponte* Vacate a Mistakenly Entered Judgment that Violates the Court's Stay

"Clerical mistakes and errors of oversight or omission may be corrected at any time. The court either may make the correction on its own initiative, or it may act on the motion of a party after such notice, *if any*, as the court orders." 11 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 2855 (3d ed.); *accord Holzmeyer v. Walgreen Income Prot. Plan for Pharmacists & Registered Nurses*, 46 F. Supp. 3d 865, 870 (S.D. Ind. 2014) ("We possess the power to amend our judgments without notice, *sua sponte* or on the motion of a party, in order to correct an omission [under Rule 60(a)].").

Here, the clerk's error in entering a judgment while the case was stayed was an "oversight or omission" that the district court could correct without notice to the parties. That UAIC also made a motion pointing out the clerk's inadvertent violation of the stay[9] did not entitle

[9] Lewis also insinuates that the district court "signed a written order granting a stay" "at UAIC's ex-parte request, without any legal support, and again, without a hearing." But there *had* been a hearing at which the district court stated that it was staying proceedings (5 R.

Lewis and Nalder to notice before the district court could vacate the erroneous judgment.

D. Although Nalder and Lewis Denied UAIC Due Process in Entering their Judgment, They Were Accorded Due Process after its Vacatur

A party dissatisfied with a written order has a remedy: a motion to alter or amend the findings, or (in the case of a final judgment) an appeal. *See* NRCP 52(b), 59(e); NRAP 3A.

Here, Lewis and Nalder did not give UAIC notice of their plan to enter a stipulated judgment in violation of the court's stay, but after its vacatur the district court gave Lewis and Nalder repeated chances to explain why their stipulated judgment should be reinstated. They insisted that the district court lacked the power to enforce its own oral ruling or minute order granting a stay—leaving Lewis and Nalder free

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App. 1129, 1141–42), the district court again made that clear in the January 22 minute order (9 R. App. 2159), and Lewis's counsel on January 15 even made comments on the draft stay order that he complains was entered "ex parte." (9 R. App. 2202–05.) (Note also that while parties have a right to notice of a motion, a losing party is not entitled as a matter of due process to weigh in on every aspect of a proposed order before it is entered. After all, the Court retains discretion to draft any order by itself without taking comments from anyone.)

to violate it—until memorialized in a written order. That those arguments proved unpersuasive is the sign of a functioning judicial system; it is not a violation of due process.

IV.

WRIT RELIEF IS IMPROPER

This is not a case crying out for extraordinary writ relief. As with the order granting intervention, the order granting consolidation is reviewable on appeal, making mandamus generally inappropriate. *Ward*, 54 Nev. 442, 22 P.2d at 360–61; *Zupancic*, 97 Nev. at 192–93, 625 P.2d at 1180. Advisory mandamus is particularly improper here, where the district court's order is based on a number of factual circumstances weighing the relative costs and efficiencies of consolidation. (P. (Dkt. 78243) App. 2.) In this interlocutory posture, the most this Court could do is evaluate whether the district court had jurisdiction to grant consolidation. As discussed above, it did. This Court should let the district court continue to develop the factual record on these issues, which will also facilitate this Court's review on appeal.

CONCLUSION

For the foregoing reasons, this Court should deny the petition.

Dated this 10th day of July, 2019.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2016 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 4374 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 10th day of July, 2019.

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CERTIFICATE OF SERVICE

I certify that on July 10, 2019, I submitted the foregoing ANSWER for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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