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Elizabeth A. Brown
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IN THE SUPREME COURT OF THE STATE OF NEVADA

DESIRE EVANS-WAIAU, individually;
GUADALUPE PARRA-MENDEZ, individually;

Appellants,

v.

BABYLYN TATE, individually;

Respondent.

Docket No. 79424

MOTION TO INTERVENE

AND

**MOTION FOR EXTENSION OF TIME TO
FILE PETITION FOR REHEARING**

Prospective intervenor The Powell Law Firm (TPLF) moves to intervene in this appeal in order to seek rehearing on portions of the published opinion that do not comport with the evidence. Specifically, portions of the published opinion hold that Paul Powell “referred” appellant Desire Evans-Waiau to certain doctors, *see Evans-Waiau v. Tate*, 138 Nev., Adv. Op. 42, at *4, *5 n.2 (2022), which is untrue and constitutes reputational harm providing TPLF standing to intervene and seek rehearing on the issue.

A. TPLF MAY INTERVENE IN THE APPEAL AT THIS STAGE.

A party may intervene on appeal if it satisfies the requirements for intervention as a matter of right under NRCP 24(a). *See, e.g., Elliott Indus. Ltd.*

P'ship v. BP Am. Prod. Co., 407 F.3d 1091, 1102-03 (10th Cir. 2005) (discussing federal analog); *Warren v. Comm'r*, 302 F.3d 1012, 1014-15 (9th Cir. 2002) (same); *see also Lawler v. Ginocchio*, 94 Nev. 623, 626, 584 P.2d 667, 668-69 (1978) (recognizing that this Court may look to the federal courts' interpretations of similar federal rules for guidance). Intervention as a matter of right must be permitted if (1) the motion is timely, (2) the applicant claims an interest relating to the property or transaction which is the subject of the action, (3) the applicant's interest may be impaired or impeded, and (4) the applicant's interest is not adequately represented by existing parties. NRCP 24(a)(2). Courts must assess a motion to intervene "in a light most favorable to the prospective intervenor," "construe the motion in favor of the prospective intervenor," and accept all material allegations in the motion as true. *Nat'l Parks Conservation Ass'n v. United States Envtl. Prot. Agency*, 759 F.3d 969, 973-75 (8th Cir. 2014).

1. The motion to intervene is timely.

First, TPLF's motion to intervene is timely. The timeliness of an application under NRCP 24 depends upon (1) the extent of prejudice to the rights of existing parties resulting from the delay; (2) prejudice resulting to the applicant if intervention is denied; (3) when the applicant learned of its need to intervene to protect its interests, and (4) the length of any delay and the reasons therefore. *See Am. Home Assur. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229,

1244, 147 P.3d 1120 (2006) (citing *Dangberg Holdings v. Douglas Co.*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999)).

The existing parties will suffer minimal prejudice by allowing TPLF to seek rehearing on the limited issues presented above—at most, their prejudice will extend to waiting for the rehearing petition to be resolved. Conversely, TPLF will suffer prejudice if intervention is not permitted, given the ongoing reputational harm caused by the portions of the opinion. TPLF only learned of his need to intervene on June 16, 2022, the date of the advance opinion’s publication. TPLF had no basis to intervene at any point prior, which explains any delay in seeking to intervene. Therefore, TPLF’s application is timely.

2. TPLF has an interest in this matter that will be impaired or impeded without intervention.

Next, the reputational harm of the opinion “may as a practical matter impair or impede [TPLF’s] ability to protect [its] interest.” *Kan. Pub. Employees Ret. Sys. v. Reimer & Koger Associates, Inc.*, 60 F.3d 1304, 1307 (8th Cir. 1995); NRCP 24(a)(2). TPLF has an interest in this matter because seemingly much of the trial, and certain portions of the opinion, hinged on the incorrect characterization that Powell “referred” Evans-Waiiau to certain medical providers—a mischaracterization that represents reputational harm providing TPLF standing to intervene. *See, e.g., Valley Health Sys., LLC v. Estate of Doe*, 134 Nev. 634, 638 n.1, 427 P.3d 1021, 1026 n.1 (2018) (holding that reputational harm

renders an issue justiciable) (citing *Grider v. Keystone Health Plan Cent., Inc.*, 580 F.3d 119, 133 (3d Cir. 2009)). That mischaracterization tacitly supports a common, yet mistaken, defense argument that injured plaintiffs are merely engaged in a “medical build-up” lawsuit¹ or have a secondary gain motive for pursuing litigation.² Even worse, that mischaracterization may continue to impair or impede TPLF clients in the future, should the defense bar begin to include those portions of the opinion as support for misguided motions in limine or arguments during trial. Therefore, TPLF has an interest in the litigation that may be impaired or impeded without intervention.

3. TPLF’s interests are not adequately protected by the existing parties.

Finally, a prospective intervenor typically carries only a minimal burden of showing that existing parties do not adequately represent its interests. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 999-1000 (8th Cir. 1993). Here, no party represents or protects the interest of TPLF, so this factor also weighs in favor of intervention.

¹ “Medical buildup” concerns a party “seek[ing] necessary but costly medical treatment, that they would otherwise forego” in order to generate a larger award. *Rish v. Simao*, 132 Nev. 189, 199 n.5, 368 P.3d 1203, 1210 n.5 (2016) (citing Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. Rev. 805, 834 (2011); Bruce A. Hagen, Karen K. Koehler & Michael D. Freeman, 2 *Litigating Minor Impact Soft Tissue Cases* § 36:12 (2015)).

² Secondary gain is to seek “social advantage . . . indirectly due to organic illness.” Stedman’s Medical Dictionary 722 (27th ed. 2000).

Therefore, TPLF has standing for mandatory intervention under NRCP 24(a)(2). TPLF should be permitted to intervene and petition for rehearing.

B. GOOD CAUSE EXISTS TO EXTEND THE TIME FOR TPLF TO FILE A PETITION FOR REHEARING.

Pursuant to NRAP 26(1)(a), good cause exists to allow TPLF a 30-day extension of time to file a petition for rehearing. No other requests for an extension have been granted. Currently, a petition for rehearing must be filed by July 5, 2022. If the Court grants this motion, the petition for rehearing would be due August 4, 2022.

Good cause exists for allowing TPLF to extend the filing deadline of the petition for 30 days for the following reasons:

1. The petition raises novel issues of reputational harm in the context of personal injury litigation that will take time to draft, edit, and finalize prior to filing.
2. The appendix in this matter spans 13 volumes and consists of thousands of pages that will be reviewed in order to provide a proper evidentiary basis for the relief sought in the petition.
3. TPLF is set to begin a two-week jury trial on July 11, 2022, and will devote significant time and resources to that trial.

This motion is submitted in good faith and for good cause shown in accordance with NRAP 26(1)(a). For the foregoing reasons, TPLF respectfully requests a 30-day extension of time to file a petition for rehearing.

Dated July 1, 2022.

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that on July 1, 2022, this document was served via electronic service to all parties requiring notice.

/s/ Tom W. Stewart
Tom W. Stewart