

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREENMART OF NEVADA NLV
LLC, a Nevada Limited Liability
Company; NEVADA ORGANIC
REMEDIES, LLC; and LONE
MOUNTAIN PARTNERS, LLC,

Appellants,

vs.

SERENITY WELLNESS CENTER,
LLC; TGIG, LLC; NEVADA
HOLISTIC MEDICINE, LLC;
TRYKE COMPANIES SO NV, LLC;
TRYKE COMPANIES RENO, LLC;
PARADISE WELLNESS CENTER,
LLC; FIDELIS HOLDINGS, LLC;
GRAVITAS NEVADA, LLC;
NEVADA PURE, LLC;
MEDIFARM, LLC; MEDIFARM IV
LLC; and THE STATE OF
NEVADA, DEPARTMENT OF
TAXATION,

Respondents.

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Supreme Court Case No. 79668
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No.: A-19-
787004-B

**RESPONDENT SERENITY WELLNESS CENTER, LLC'S
MOTION TO DISMISS SERENITY WELLNESS CENTER, LLC
FROM INTERLOCUTORY APPEAL**

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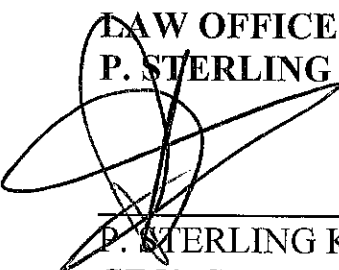
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Attorneys for Respondent Serenity Wellness Center, LLC

The following attorneys have or are expected to appear for the Serenity Applicant in this matter before this Court: Sterling Kerr, Esq., George Robinson, Esq., Peter Pratt, Esq., and Taylor Simpson, Esq.

Respectfully submitted this 15 day of May, 2020.

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TABLE OF AUTHORITIES

Cases

Huneycutt v. Huneycutt, 575 P.2d 585 (Nev 1978).

Manley v. Manley, 122 Nev. 849 (2006)

Rules

NRCP 41

NRAP 27

I. SUMMARY OF THE ARGUMENT

Respondent Serenity Wellness Center, LLC (“Serenity”) was dismissed with prejudice from the underlying consolidated action by the district court and should be removed from this interlocutory appeal.

II. RELEVANT PROCEDURAL HISTORY

On February 21, 2020, Respondent Serenity filed its Motion to Voluntarily Dismiss And/Or Drop Serenity Wellness Center, LLC As A Plaintiff on Order Shortening Time in the underlying district court action under NRCP 41 (1)(a). Serenity argued that no legal prejudice would occur to the many other parties in the consolidated matter.

On February 21, 2020, Sterling Kerr, Esq. and George Robinson, Esq. of the Law Offices of P. Sterling Kerr substituted in a counsel of record for Serenity.

On April 3, 2020, an Order was entered by the district court dismissing Serenity with prejudice as a party in the underlying action, finding that no legal prejudice would impact the other parties in this action.

On April 10, 2020, a Notice of Entry of Order was filed in the underlying action of the Order dismissing Serenity with prejudice from the underlying action. No notice of appeal has been filed regarding this Order dismissing Serenity with prejudice.

The underlying action continues to go forward with substantial pleadings, motions, and assorted filings ongoing on a near daily, if not hourly basis.

III. POINTS AND AUTHORITIES

Respondent Serenity is no longer a party to the underlying action and so should be removed from this interlocutory appeal, as an extraneous, non-interested party. As such, Serenity is no longer an adverse party to Appellant and is no longer a proper party to be in the appeal. The district court dismissed Serenity with prejudice within its appropriate authority according to NRCP 41(a)(2).

The NRAP 27 governs filing motions in Nevada appellate courts and allows for parties to seek relief from the appellate courts. The proceedings in the underlying consolidated cases were not stayed and Serenity successfully moved for its dismissal with prejudice from the action. Nevada has long allowed district court motions to be filed during an appeal and such relief can and should impact the appeal, as in *Huneycutt v. Huneycutt*, 575 P.2d 585 (Nev 1978). In *Manley v. Manley*, 122 Nev. 849 (2006), 855 the Court held

This court has consistently explained that “a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court and that the point at which jurisdiction is transferred from the district court to this court must be clearly defined. Although, when an appeal is perfected, the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal’s merits.

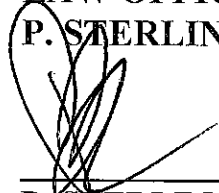
In this matter, Serenity is but one of many parties to the consolidated underlying case. Its role is collateral to the issues on appeal and Serenity is merely an extra party in a very complicated and complex case. The underlying consolidated case is ongoing while this interlocutory appeal is pending.

The district court therefore had authority to consider and grant a motion to dismiss with prejudice, which it did so under NRCP 41(a)(2). No party filed a notice of appeal with regards to the dismissal of Serenity from the underlying consolidated cases. As such, Serenity is no longer a party to the underlying consolidated cases.

IV. CONCLUSION

This Court should therefore dismiss Serenity from this interlocutory appeal.

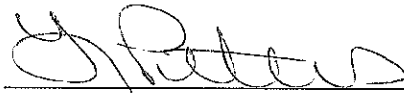
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*Attorneys for Respondent Serenity Wellness
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CERTIFICATE OF SERVICE

I hereby certify that pursuant to NRAP 25(1)(d) on the 15 day of May, 2020, I served a true and correct copy of the foregoing **RESPONDENT SERENITY WELLNESS CENTER, LLC'S MOTION TO DISMISS SERENITY WELLNESS CENTER, LLC FROM APPEAL** via the Court's electronic filing service program (Document Access) to all registered counsel and/or parties.



An employee of the Law Offices of P.
Sterling Kerr