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Feb 25 2020 01:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

POINTS AND AUTHORITIES

1. Background

On 1/9/2020, Petitioners filed their Original Petition for Writ of Mandamus, challenging the ruling on their Motion to Strike Trial De Novo Requests, made by Department 8, Second Judicial District Court.

Prior to the District Court's 11/20/2019 order denying the Motion to Strike, Judge Connie Steinheimer had stayed the Short Trial Proceedings in both cases pending the outcome of the Motion to Strike. (See Walker Appendix at p. 337; Ortega Appendix at p. 562.)

The short trial in Walker is scheduled for 5/18/2020. The short trial in Ortega is scheduled for 6/1/2020.

On 2/11/2020, Petitioners filed identical motions to stay the short trial proceedings pending the outcome of the Original Petition for Writ of Mandamus. (See Exhibit 1 attached hereto.) On 2/12/2020, the short trial judge assigned to the Ortega case entered an order denying the motion to stay. (See Exhibit 2 attached hereto.) As of the filing of this motion the short trial judge assigned to the Walker case has not ruled upon the motion to stay.

2. Argument

NRAP 8(a) generally requires that a party seek a stay in the district court before seeking a stay in the Supreme Court. This rule also applies to writ petitions. See *Hansen v. The Eighth Judicial District Court*, 116 Nev. 650, 657 (2000).

1 Petitioners have fulfilled this requirement by unsuccessfully moving for
2 stays in the district court.

3 **1. The Ortega order of 2/12/2020 denying the motion to stay is**
4 **erroneous**

5
6 The 2/12/2020 order denies Petitioner's Motion to Stay Short Trial
7 Proceedings based upon two erroneous findings:

- 8 a. The order states that the 11/20/2019 order denying the Motion to
9 Strike Trial De Novo denied Petitioner's Motion to Stay Short Trial
10 Proceedings. It is not possible for an order entered on 11/20/2019 to
11 prospectively deny a motion that was not filed until 2/11/2020.
12
13 b. The order of 2/12/2020 over looks the fact that Judge Steinheimer had
14 stayed the short trial proceedings in her orders of 6/19/2019 (Walker)
15 and 10/10/2019 (Ortega), until resolution of the Motions to Strike
16 Trial De Novo.
17

18 **2. The Walker motion to stay has not been ruled upon**

19
20 Petitioner Walker filed his motion to stay on 2/11/2020, but it has not been
21 ruled upon. Waiting longer for a ruling would be impracticable due to the time
22 constraints involved.
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1 **3. NRCP 8(c) factors**

2 **(1) Whether the object of the appeal or writ petition will be defeated**
3 **if the stay or injunction is denied.**
4

5 The relief sought by way of the Motions to Strike Trial De Novo was
6 to prevent defendant from proceeding to trial de novo in the short trial program due
7 to alleged bad faith participation in the arbitration program due to the filing of
8 requests for trial de novo without regard to the facts and circumstances of each
9 case. If the stay is denied, the object of the writ petition will be defeated because
10 the purpose of the writ petition is to obtain overruling of the order denying the
11 Motions to Strike. If Petitioners are forced to proceed to short trial while the writ
12 petition is pending, the object of the writ is defeated.
13
14

15 **(2) Whether Petitioners will suffer irreparable or serious injury if the**
16 **stay or injunction is denied.**

17 If Petitioners are forced to proceed to short trials in these cases, the
18 irreparable injury is that defendants will have obtained trial de novos and short
19 trials where they should not have due to alleged bad faith in obtaining those trial de
20 novos. Petitioners will have suffered harm that cannot be adequately compensated
21 by traditional means of compensation, such as potentially conflicting orders should
22 this Court grant the writ petition after short trials have taken place. In addition
23 Petitioners, and Respondents, will incur the time and monetary expense of the short
24 trial process.
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1 **(3) Whether respondents/real parties in interest will suffer**
2 **irreparable or serious injury if the stay or injunction is granted.**

3 Respondents/real parties in interest will suffer no harm. At most, a
4 delay in proceeding to short trial will result. A stay will not cause any additional
5 financial hardship. A stay will not cause any loss of evidence or witnesses.

7 **(4) Whether Petitioners are likely to prevail on the merits in the writ**
8 **petition.**

9 In their Original Petition for Writ of Mandamas, Petitioners argue in
10 detail that the District Court abused its discretion in two separate instances. Those
11 two instances are (1) disregarding the unchallenged and uncontroverted expert
12 testimony of an expert witness, and (2) failure to find per se bad faith participation
13 in the Arbitration Program as a matter of law pursuant to *Gittings v. Hartz*, 116
14 Nev. 386(2000).

15 Petitioners submit that they are likely to prevail on the merits in the writ
16 petition due to these two strong points supporting abuse of discretion.

17 **4. Conclusions**

18 Petitioners submit that an order staying the short trial proceedings in both
19 cases is warranted. A stay will allow sufficient time with in which for the Court to
20 consider and rule upon Petitioners' Original Petition for Writ of Mandamus and
21 still preserve the ability to proceed to short trial should the Court deny the writ. No
22 harm will be caused by a stay, while harm will or could result if a stay is not
23 24 25 26 27 28

1 granted and the Court has not ruled upon the writ by the time the short trials are set
2 to occur.

3 Respectfully submitted, this 25th day of February, 2020.
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7 William R. Kendall, Esq.
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9 State Bar No. 3453
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17 Attorney for Petitioners
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Reno, NV 89519

A true and correct copy of the preceding document was served by United

Honorable Barry Breslow
Second Judicial District Court, Department 8
75 Court Street
Reno, NV 89501

Respondent

Dated this 25th day of February, 2020.

A handwritten signature in blue ink, appearing to read "William R. Kendall", is written over a horizontal line.

William R. Kendall

LIST OF EXHIBITS

1. Exhibit 1.....p. 11
2. Exhibit 2.....p. 21

Exhibit 1

Exhibit 1

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4

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6

7 William R. Kendall, Esq.

8 State Bar No. 3453

9 137 Mt. Rose Street

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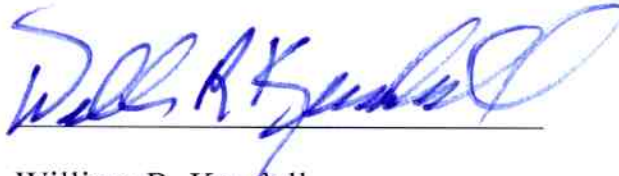
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12 Attorney for Petitioners
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Respondent

Dated this 25th day of February, 2020.

A handwritten signature in blue ink, appearing to read "William R. Kendall", is written over a horizontal line.

William R. Kendall

Exhibit 2

Exhibit 2

1 CODE NO. STP7

2
3
4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE
6

7 RALPH ORTEGA,

Case. No. CV18-02032

8 Plaintiff,

Dept. STP

9 vs.

10 KATHERYN JEAN FRITTER;
DOES 1-V; inclusive,

11 Defendants.
12

13 **ORDER ON MOTION TO STAY PROCEEDINGS**

14 Plaintiff Ralph Ortega has filed a Motion with this Court, asking this Pro Tempore Judge to
15 enter an Order staying the proceedings in this Short Trial matter until such time that the Nevada
16 Supreme Court has decided the Petition for a Writ of Mandamus which plaintiff Ralph Ortega has
17 filed, asking the Nevada Supreme Court to reverse the decision of the Honorable Barry L. Breslow
18 which denied plaintiff's Motion to Strike defendant Kathryn Jean Fritter's Request for a Trial De
19 Novo following an Arbitrator's award in favor of the plaintiff. Although this case has been in the
20 Short Trial Program since July 5, 2019, and the Washoe County District Court entered its Order
21 denying plaintiff's Motion to Strike defendant's Request for a Trial De Novo on November 20, 2019,
22 plaintiff Ralph Ortega did not file his present Motion to Stay Short Trial Proceedings until February
23 11, 2020. I find this passage of time problematic insofar as plaintiff's present Motion for Stay is
24 concerned. Petitions for extraordinary writs are particularly time-sensitive, calling for the prompt
25 resolution of issues which could not otherwise be suitably addressed through an appeal. Here, if
26 plaintiff Ralph Ortega was going to file a Petition for a Writ of Mandate, challenging the District
27 Court's Order which denied his Motion to Strike defendant's Request for a Trial De Novo, it would
28 have been more appropriate, given the nature of an extraordinary writ, for defendant to have filed his

1 petition promptly after the District Court entered its Order denying his Motion to Strike and Request
2 for Sanctions, rather than waiting for just shy of three (3) months to do so. There is, though, another
3 reason why this Pro Tempore Judge will deny plaintiff's Motion to Stay these proceedings. That
4 reason is founded upon this Pro Tempore Judge's belief that the District Court has already acted upon
5 plaintiff's Motion to Stay these proceedings.

6 After defendant Katheryn Jean Fritter had filed her Request for a Trial De Novo on July 5,
7 2010, plaintiff Ralph Ortega immediately filed two pleadings in response to the action taken by
8 defendant. On July 15, 2019, plaintiff Ralph Ortega filed his Motion to Strike Trial De Novo; Impose
9 Sanctions; and Permit Discovery. On that same date, plaintiff filed his first Motion to Stay Short
10 Trial Proceedings, arguing that:

11 "Given the likelihood that Plaintiff's MOTION TO STRIKE TRIAL DE
12 NOVO; IMPOSE SANCTIONS; and PERMIT DISCOVERY will not be ruled upon
13 until after the Short Trial process has been well underway, Plaintiff submits that a stay
14 of the Short Trial proceedings pending resolution of his MOTION TO STRIKE TRIAL
15 DE NOVO; IMPOSE SANCTIONS; and PERMIT DISCOVERY is in order."

16 Defendant Katheryn Jean Fritter filed her Oppositions to these Motions on July 25, 2019; plaintiff
17 Ralph Ortega filed his Reply in support of his MOTION TO STRIKE TRIAL DE NOVO; IMPOSE
18 SANCTIONS; and PERMIT DISCOVERY on July 31, 2019; and, following an evidentiary hearing
19 which was held on November 12, 2019, the Washoe County District Court entered its Order
20 Addressing Motions to Strike and for Rule 11 Sanctions on November 20, 2019. In the mind of this
21 Pro Tempore Judge, the language of the Order is instructive. There, at page 3, lines 16-19, Judge
22 Breslow ruled:

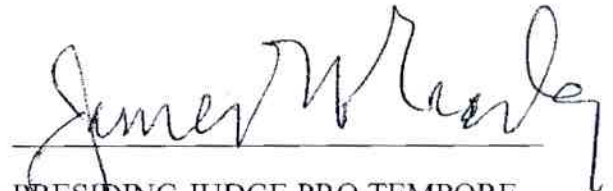
23 "IT IS HEREBY ORDERED that both Motions to Strike Request for Trial De
24 Novo and both Motions for NRCP 11 Sanctions are hereby denied, along with any
25 other remedies the parties have sought.

26 "IT IS HEREBY FURTHER ORDERED that both matters (CV18-01798 &
27 CV18-02032) shall proceed in the Short Trial Program." (Emphasis added.)

28 Although not entirely clear, this Pro Tempore Judge has concluded that the Washoe Court District

1 Court, by its Order of November 20, 2019, not only denied plaintiff Ralph Ortega's MOTION TO
2 STRIKE TRIAL DE NOVO; IMPOSE SANCTIONS; and PERMIT DISCOVERY, but it also denied
3 plaintiff's Motion to Stay Short Trial Proceedings. As a result of this Order, if plaintiff Ralph Ortega
4 wishes to stay proceedings in this Short Trial, plaintiff's appropriate remedy would be to seek a stay
5 of these proceedings in the Nevada Supreme Court in connection with his filing of a Petition for
6 a Writ of Mandate pursuant to NRAP 8(2).

7 DATED this 12th day of February, 2020.

8 
9
10 PRESIDING JUDGE PRO TEMPORE
11

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of James Shields
14 Beasley, and that on this 12th day of February, 2020, I transmitted a true and correct copy of the
15 foregoing document by the methods noted below:

16 ☐ **Personal delivery to the following: [NONE]**

17 ☒ **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes
18 effective service for all eFiled documents pursuant to the eFile User Agreement**

19 William Kendall
137 Mt. Rose Street
Reno, Nevada 89509

20 Adam McMillan
21 Law Offices of S. Denise McCurry
200 S. Virginia Street, 8th Floor
22 Reno, Nevada 89501

23 ☐ **Caused a true copy of the foregoing document to be deposited in the United States mail
24 at Reno, Nevada, by first-class mail, addressed to:**

25 By 
26 CHARLES BEASLEY
27
28