Case No. 81596

IN THE SUPREME COURT OF NEVADA

KEVIN PAUL DEBIPARSHAD, M.D., an individual; KEVIN P. DEBIPARSHAD PLLC, d/b/a SYNERGY SPINE AND ORTHOPEDICS; DEBIPARSHAD PROFESSIONAL SERVICES, LLC, d/b/a SYNERGY SPINE AND ORTHOPEDICS; ALLEGIANT INSTITUTE INC., a Nevada domestic professional corporation doing business as ALLEGIANT SPINE INSTITUTE; JASWINDER S. GROVER, M.D., an individual; JASWINDER S. GROVER, M.D., Ltd., d/b/a NEVADA SPINE CLINIC,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, AND THE HONORABLE JUDGE KERRY EARLEY,

Respondents,

and

JASON GEORGE LANDESS a.k.a. KAY GEORGE LANDESS,

Real Party In Interest.

Electronically Filed
Oct 14 2020 12:41 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Lower Court No. A-18-776896

MOTION TO EXCEED WORD LIMIT FOR ANSWERING BRIEF

Docket 81596 Document 2020-37751

Real Party in Interest Jason George Landess a.k.a. Kay George Landess requests leave under NRAP 32(a)(7)(D) to file an answering brief that exceeds the 7,000 word limit in NRAP 21(d).

By way of their Petition for Writ of Mandamus, Petitioners seek to overturn an award of costs entered against them following their injection of race into a civil jury trial that resulted in a mistrial. Petitioners also seek to void the mistrial order itself on procedural grounds without addressing the actual merits of the mistrial in their Petition. In doing so, Petitioners were able to comply with the 7,000-word limit in NRAP 21(d). Real Party in Interest has no such luxury and must address the merits of the District Court's mistrial order, along with a laches argument for Petitioners' nearly one year delay in bringing this Petition.

Petitioners' injection of race into the trial was plain error. Following Judge Rob Bare's declaration of a mistrial, Petitioners sought and successfully obtained his disqualification as trial judge. Even assuming as Petitioners suggest that Judge Bare could not sign the mistrial order following the filing of Petitioners' motion to disqualify, any successor judge appointed to the case following Judge Bare's disqualification had to grant a mistrial. Petitioners' actions resulted in plain error and a mistrial which led to the award of costs against them that they now seek to overturn.

In answering Petitioners' Writ, Real Party in Interest must address the merits of the mistrial that led to the award of costs, along with a laches argument for

Petitioners' nearly one year delay in bringing this Petition, since Petitioner's did not do so in their opening brief, thereby necessitating the filing of the instant motion seeking authorization to exceed the word limit found in NRAP 21(d).

DATED this 14th day of October, 2020.

HOWARD & HOWARD ATTORNEYS PLLC

By: */s/ Martin A. Little*

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ATTORNEYS FOR REAL PARTY IN INTEREST

DECLARATION OF MARTIN A. LITTLE IN SUPPORT OF MOTION TO EXCEED WORD LIMIT FOR ANSWERING BRIEF

STATE OF NEVADA)
)
COUNTY OF CLARK)

1. I, Martin A. Little, under penalty of perjury, declare that I am a Nevada licensed lawyer with Howard & Howard Attorneys PLLC and that I am counsel for Real Party in Interest Jason George Landess a.k.a. Kay George Landess.

2. Jason George Landess requests leave under NRAP 32(a)(7)(D) to file an answering brief that exceeds the 7,000-word limit in NRAP 21(d).

3. Real Party in Interest's brief contains **[INSERT NUMBER]** words, responding to a 6,971-word opening brief.

4. By way of their Petition for Writ of Mandamus, Petitioners seek to overturn an award of costs entered against them following their injection of race into a civil jury trial that resulted in a mistrial. Petitioners also seek to void the mistrial order itself on procedural grounds without addressing the actual merits of the mistrial in their Petition. In doing so, Petitioners were able to comply with the 7,000-word limit in NRAP 21(d). Real Party in Interest has no such luxury and must address the merits of the District Court's mistrial order, along with a laches argument for Petitioners' nearly one year delay in bringing this Petition.

5. Petitioners' injection of race into the trial was plain error. Following Judge Rob Bare's declaration of a mistrial, Petitioners sought and successfully

obtained his disqualification as trial judge. Even assuming as Petitioners suggest that Judge Bare could not sign the mistrial order following the filing of Petitioners' motion to disqualify, any successor judge appointed to the case following Judge Bare's disqualification had to grant a mistrial. Petitioners' actions resulted in plain error and a mistrial which led to the award of costs against them that they now seek to overturn.

6. In answering Petitioners' Writ, Real Party in Interest must address the merits of the mistrial that led to the award of costs, along with a laches argument for Petitioners' nearly one year delay in bringing this Petition, since Petitioners did not do so in their opening brief.

7. Real Party in Interest exercised diligence and made every effort to address the merits of the mistrial within the limitations of NRAP 21(d). However, the complexity of the issues and the long history of this case provide good cause for, and necessitate the filing of, the instant motion seeking authorization to exceed the 7,000-word limit found in NRAP 21(d).

DATED this 14th day of October, 2020.

By: */s/ Martin A. Little*
Martin A. Little

CERTIFICATE OF SERVICE

I certify that on October 14, 2020, I submitted the foregoing "Motion to Exceed Word Limit for Answering Brief" for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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ATTORNEYS FOR PETITIONERS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

The Honorable Kerry Earley
The Eighth Judicial District Court
Regional Justice Center
Department IV
200 Lewis Avenue
Las Vegas, Nevada 89101

RESPONDENT

/s/ Jill M. Berghammer
An Employee of Howard & Howard Attorneys PLLC