

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 21 2021 09:10 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 81710

CHEYENNE NALDER

Appellant,

vs.

GARY LEWIS; and UNITED AUTOMOBILE INSURANCE
COMPANY,

Respondents.

ON APPEAL FROM
THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

District Court Case No. 07A549111

CHEYENNE NALDER'S REPLY APPENDIX

David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens Law Offices
3636 N. Rancho Drive
Las Vegas, NV 89130
Telephone: 702-656-2355
Facsimile: 702-656-2776
Email: dstephens@davidstephenslaw.com

TABLE OF CONTENTS TO REPLY APPENDIX

	Document	Date	Pages
Vol. I APPRPLY0001-0006	Order from January 8, 2019 hearing Case No. A-18-772220-c	2/14/2019	6
Vol I APPRPLY0007-0011	Order from January 23, 2019 hearing Case No. A-18-772220-c	2/14/2019	5

CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a)(1) and NRAP 25(c)(1), I hereby certify that I am over the age of eighteen (18), I am an employee of Stephens Law Offices and on the 19th day of October, 2021, I served a true copy of the foregoing **CHEYENNE NALDER'S REPLY APPENDIX** via the Nevada Supreme Court E-Filing System, to the following parties.

Daniel M. Polsenberg, Esq.
Attorney for UAIC, Respondent

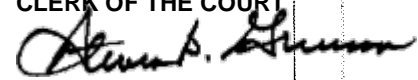
Matthew Douglas, Esq.
Attorney for UAIC, Respondent

E. Breen Arntz, Esq.
Attorney for Gary Lewis

Thomas F. Christensen, Esq.
Attorney for Gary Lewis

_S/ David A. Stephens _____
An employee of
STEPHENS LAW OFFICES

Electronically Filed
2/14/2019 3:41 PM
Steven D. Grierson
CLERK OF THE COURT


ORDR

MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
Phone (702) 243-7000
Facsimile (702) 243-7059
mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT**CLARK COUNTY, NEVADA**

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, RANDALL TINDALL, ESQ.
and RESNICK & LOUIS, P.C., and DOES I
through V.,

Third Party Defendants.

CASE NO.: 07A549111
DEPT. NO.: 20

Consolidated with
CASE NO.: A-18-772220-C
DEPT. NO.: 20.

ORDER ON MOTIONS HEARD JANUARY 9th, 2019

This matter having come on for hearing on January 9th, 2019, in Department XX, before

the Honorable Eric Johnson, on (1) Third Party Plaintiff Lewis' Motion for Relief from Orders and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Pending Appeal, (3) Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C), (4) Defendant Lewis' (through Breen Arntz, Esq.) withdrawals of Defendant Lewis Motions to Dismiss filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111; (5) Defendant Lewis Motions to Dismiss (through Randall Tindall, Esq.) filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111; (6) UAIC's Oral Motion to Continue Defendant Lewis Motions to Dismiss (through Randall Tindall, Esq.) filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111 pending new counsel; (7) UAIC's Motion for an Evidentiary hearing for a fraud upon the court; Plaintiff appearing through her counsel of record David Stephens, Esq. of Stephens & Bywater, and Defendant Lewis appearing through his counsel of record, Breen Arntz, Esq., Intervenor/Third Party Defendant UAIC appearing through its counsel of record, Thomas E. Winner, Esq. & Matthew J. Douglas, Esq. of the Law Firm of Atkins Winner and Sherrod, Third Party Plaintiff Lewis appearing through his counsel of record Thomas Christensen, Esq. of The Christensen Law Offices, and Third Party Defendants Randall Tindall and Resnick & Louis P.C. appearing through their Counsel of record Dan R. Waite, Esq. of Lewis Roca Rothgerber Christie, LLP, the Court having reviewed the pleadings and documents on file herein, and consideration given to hearing at oral argument, finds as follows:

///

FINDINGS OF FACT

1. That the issues of law on second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504, are substantially similar and/or related to issues of law in these consolidated cases;
2. That the first and second claims for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case no. 07A549111 and seeking Declaratory relief, respectively, contain issues of law which substantially similar and/or related to issues of law on a second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504;
3. That the third claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to a July 2007 automobile accident have been previously litigated or, could have been litigated, in her original action, Case no. 07A549111, herein;
4. This case is unusual but the Court does not find any unethical behavior by either Mr. Christensen or Mr. Arntz.

CONCLUSIONS OF LAW

1. Pursuant to N.R.C.P. 24 and N.R.S. 12.130 UAIC has a shown right and interest to intervene in these matters;
2. That the third claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to the July 2007 automobile accident are precluded as same have been previously litigated or, could

1 have been previously litigated in Case No. 07A549111, herein, pursuant to the factor
2 as set forth *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d
3 709,713 (2008).

- 4
5 3. That the first claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-
6 772220-C, herein, seeking a new judgment on her original 2007 judgment from case
7 no. 07A549111 is not a valid cause of action and the Court would dismiss same under
8 the *Medina* decision, but based upon the request of Counsel for Plaintiff David
9 Stephens, Plaintiff's first claim for relief will be stayed pending decision in *James*
10 *Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis,*
11 *individually v. United Automobile Insurance Company*, case no. 70504;

12 **ORDER**

13 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Third Party Plaintiff
14 Lewis' Motion for Relief from Orders and Joinder in all other Motions for Relief from Orders on
15 Order Shortening Time, as well as Plaintiff Nalder's Motion for Relief from Orders, are
16 DENIED, for the reasons stated in the record; and,

17 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor's
18 UAIC's Counter-Motion to Stay Pending Appeal is GRANTED, for ther reasons stated in the
19 record, and Plaintiff Nalder's first and second claims for relief in her Complaint in case no. A-
20 18-772220-C, herein, (claim 1) seeking a new judgment on her original judgment entered in case
21 no. 07A549111 and, (claim 2) seeking Declaratory relief, respectively, are STAYED pending
22 further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*
23 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case
24 no. 70504; and
25
26

27 *///*
28

1 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
2 UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C) is GRANTED IN
3 PART and DEFERRED IN PART, such that Plaintiff Nalder's third claim for relief in her
4 Complaint in case no. A-18-772220-C, herein, (claim 3) seeking general and special damages
5 related to and arising from the July 2007 automobile accident, is DISMISSED, but ruling on the
6 Motion to Dismiss Plaintiff Nalder's first and second claims for relief in her Complaint in case
7 no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case
8 no. 07A549111 and seeking Declaratory relief, respectively, are DEFERRED pending further
9 ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*
10 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case
11 no. 70504;
12

13 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that
14 Defendant Lewis (through Breen Arntz, Esq.) WITHDRAWALS of Defendant Lewis' Motions
15 to Dismiss filed in case No. A-18-772220-C as well as case no. 07A549111 and Defendants
16 Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C
17 as well as case no. 07A549111 (filed by Randall Tindall, Esq.) are hereby WITHDRAWN;
18

19 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that
20 Defendant Lewis Motions to Dismiss filed in case No. A-18-772220-C as well as case no.
21 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60
22 in case No. A-18-772220-C as well as case no. 07A549111 (through Randall Tindall, Esq.) are
23 all hereby STRICKEN per WITHDRAWAL by Counsel for Lewis, Breen Arntz, Esq.;

24 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that UAIC's
25 Oral Motion to Continue Defendant Lewis' Motions to Dismiss filed in case No. A-18-772220-C
26 as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment
27
28

1 pursuant to N.R.C.P. 60 in case No. A-18-772220-C as well as case no. 07A549111 (through
2 Randall Tindall, Esq.) pending new counsel to be retained by UAIC, is hereby DENIED
3 WITHOUT PREJUDICE for the reasons stated in the record;

4 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** UAIC's
5 Motion for an Evidentiary hearing for a fraud upon the court is hereby DENIED WITHOUR
6 PREJUDICE for the reasons stated in the record.
7

8 **IT IS SO ORDERED.**


9 **DATED** this 14 day of FEBRUARY 2019.

10
11 
12 DISTRICT JUDGE

ERIC JOHNSON *SS*

13 Submitted by:

14 ATKIN WINNER & SHERROD, LTD.

15 
16 MATTHEW J. DOUGLAS, Esq.
17 Nevada Bar No. 11371
18 1117 South Rancho Drive
19 Las Vegas, Nevada 89102
20 *Attorneys for Intervenor UAIC*

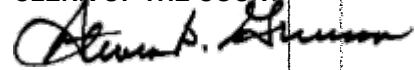
ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

Electronically Filed

2/14/2019 3:41 PM

Steven D. Grierson

CLERK OF THE COURT

**ORDER**

MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
Phone (702) 243-7000
Facsimile (702) 243-7059
mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT**CLARK COUNTY, NEVADA**

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, RANDALL TINDALL, ESQ.
and RESNICK & LOUIS, P.C., and DOES I
through V.,

Third Party Defendants.

CASE NO.: 07A549111

DEPT. NO.: 20

Consolidated with

CASE NO.: A-18-772220-C

DEPT. NO.: 20.

ORDER ON MOTIONS FOR JANUARY 23rd, 2019

This matter having been set for hearing on January 23rd, 2019, in Department XX, before

the Honorable Eric Johnson, on (1) Plaintiff Nalder's Motion for Summary Judgment and Relief from Order Pursuant to N.R.C.P. 60(b), (2) Intervenor United Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Plaintiff's Summary Judgment Pending Appeal, (3) Intervenor UAIC's Motion to Dismiss Third-Party Plaintiff Lewis's Complaint (Case No. A-18-772220-C), (4) Third-Party Plaintiff Lewis' Counter-Motion for summary judgment on his third-party complaint (case No. A-18-772220-C), (5) Intervenor UAIC's counter-motions to: (a) Strike the affidavit of Lewis for the counter-motion for summary judgment on the third-party complaint, and/or (b) Stay said counter-motion for summary judgment and other proceedings on the third party complaint pending Appellate ruling, and/or (c) Stay counter-Motion for summary judgment on the third party complaint pending discovery pursuant to N.R.C.P. 56 (f); the Court having reviewed the pleadings and documents on file herein, issued a minute order, dated January 22, 2018, which vacated the scheduled January 23, 2019 hearings on the above-noted motions and, per same minute order, the Court finds as follows:

FINDINGS OF FACT

1. That the issues of law on second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504, are substantially similar and/or related to issues of law in these consolidated cases;
2. That the first and second claims for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case no. 07A549111 and seeking Declaratory relief, respectively, contain issues of law which substantially similar and/or related to issues of law on a second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United*

1 *Automobile Insurance Company*, case no. 70504;

- 2 3. That the claims of bad faith and other extra-contractual claims alleged by third party
3 plaintiff Gary Lewis in his third party complaint against Intervenor UAIC, herein, in
4 case no. A-18-772220-C, contain issues of law which substantially similar and/or
5 related to issues of law on a second certified question before the Nevada Supreme
6 Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary*
7 *Lewis, individually v. United Automobile Insurance Company*, case no. 70504 .

9 CONCLUSIONS OF LAW

- 10 1. That based upon the hearings in this matter, on January 9th, 2019, and, order entered
11 on same hearings by the court, the issues raised in Plaintiff Nalder's Motion for
12 sumamry judgment are the same as those currently pending before the Nevada
13 Supreme Court and, accordingly, Plaintiff's Motion will be stayed, in the interest of
14 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*
15 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
16 *Company*, case no. 70504;
- 17 2. That the issues raised in Third Party Plaintiff Lewis' Third party complaint, and the
18 Motion to dismiss same third party complaint as well as the motion for summary
19 judgment on the third party complaint, are the same as those currently pending before
20 the Nevada Supreme Court and, accordingly, Third Party Plaintiff Lewis' third party
21 complaint and the Motion to dismiss same third party complainat and, counter-motion
22 for summary judgment on same third party complaint, will be stayed, in the interest of
23 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*
24 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
25 *Company*, case no. 70504.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Nalder's Motion for Summary judgment and Relief from Orders pursuant to N.R.C.P. 60 (Case No. A-18-772220-C) is STAYED, pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor's UAIC's Counter-Motion to Stay Plaintiff Nalder's Motion for summary judgment and proceedings pending Appeal is GRANTED, because the court finds the issues raised in Plaintiff's Motion are the same as those currently before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504, and Plaintiff Nalder's Motion for summary judgment is STAYED pending further ruling by the Nevada Supreme Court; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor UAIC's Motion to Dismiss Third Party Plaintiff Lewis's Complaint and Third Party Plaintiff Lewis' Counter-Motion for Summary Judgment (Case No. A-18-772220-C) are STAYED pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor UAIC's Counter-Motion to Stay UAIC's Motion to Dismiss Lewis' Third Party Complaint and Third Party Plaintiff Lewis' Counter-Motion for summary judgment and proceedings (Case No. A-18-772220-C) pending Appeal is GRANTED, because the court finds the issues raised in said Motions are the same as those currently before the Nevada Supreme Court in *James Nalder,*

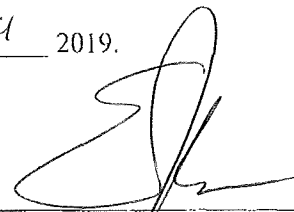
ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

1 *Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United*
2 *Automobile Insurance Company, case no. 70504, and Third Party Plaintiff Lewis' Motion for*
3 *summary judgment and Third Party Plaintiff Lewis' Counter-Motion for summary judgment and*
4 *proceedings (Case No. A-18-772220-C) are STAYED pending further ruling by the Nevada*
5 *Supreme Court; and*

7 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
8 UAIC's Counter-Motion to Strike Lewis' Affidavit for his Counter-Motion for summary
9 Judgment on his third-party complaint as well as UAIC's Counter-motion for additional
10 discovery pursuant to N.R.C.P. 56(f) (Case No. A-18-772220-C) are DENIED WITHOUT
11 PREJUDICE.

12 **IT IS SO ORDERED.**


14 DATED this 11 day of FEBRUARY 2019.

17 
DISTRICT JUDGE

ERIC JOHNSON *ES*

18 Submitted by:

19 ATKIN WINNER & SHERROD, LTD.

21 
MATTHEW J. DOUGLAS, Esq.

22 Nevada Bar No. 11371

23 1117 South Rancho Drive

24 Las Vegas, Nevada 89102

Attorneys for Intervenor UAIC

25 CASE NO.: 07A549111

DEPT. NO.: 20

26 *Consolidated with*

27 CASE NO.: A-18-772220-C

28 DEPT. NO.: 20