

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC (doing business as
“Centennial Hills Hospital Medical Center”), a foreign limited
liability company,
Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE
OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE
HONORABLE JUDGE JERRY A. WIESE II,
Respondent,
and

ESTATE OF REBECCA POWELL, through BRIAN POWELL, as
Special Administrator; DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an Heir; ISAIAH
KHOSROF, individually and as an Heir; LLOYD CREECY,
individually,

Real Parties In Interest,
and

DR. DIONICE S. JULIANO, M.D., an individual; DR. CONRADO
C.D. CONCIO, M.D., an individual; DR. VISHAL S. SHAH,
M.D., an individual,
Additional Parties In Interest.

Supreme Court
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Elizabeth A. Brown
Clerk of Supreme Court
District Court
No.: A-19-
788787-C

**PETITIONER’S MOTION FOR STAY PENDING DECISION ON
WRIT OF MANDAMUS**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner seeks a stay of all proceedings in the District Court having been denied such relief by Respondent twice before, on April 20, 2021 (**Exhibit “A”**) and by that Respondent’s prior order of October 29, 2020 (**Exhibit “B”**). There is a pending writ of mandamus petition, for which this Court ordered answering and reply briefs (**Exhibit “C”**), which have all been filed with this Court. All that remains is this Court’s decision on a case dispositive issue.

Respondent’s scheduling order (**Exhibit “D”**), directed initial expert disclosures on or before June 18, 2021, rebuttal expert disclosures on August 27, 2021, and discovery completion by October 28, 2021. The case is set for a firm 5 week jury trial commencing May 23, 2022.

By way of brief background, Petitioner’s underlying summary judgment motion was predicated on the filing of the case beyond the statute of limitations, based upon Plaintiffs’ receipt of inquiry notice no later than June 11, 2017 and the action having been commenced on February 3, 2019. The Real Parties In Interest (“Plaintiffs”) sought and received Ms. Powell’s complete medical records from Petitioner in May and June, 2017, demonstrating their suspicion of alleged malpractice. Moreover, Plaintiffs supplied incontrovertible evidence in the form of two complaints to State agencies initiated by Plaintiffs themselves within a couple

of weeks of Ms. Powell's death, specifically alleging that she had been subject to neglect by Petitioner and requested investigations by both agencies into Petitioner's suspected neglect and the alleged malpractice, both submitted in May and June, 2017. Petitioner demonstrated that Plaintiffs' expert affidavit confirmed he reviewed the medical records which Plaintiffs sought and received prior to initiating their lawsuit, and that he primarily based his opinions on the alleged departures he gleaned from said records, confirming Plaintiffs' inquiry notice when they received the medical records in June, 2017.

Ms. Powell died on May 11, 2017. The incontrovertible evidence submitted on Petitioner's underlying summary judgment motion demonstrated that Plaintiffs were on inquiry notice as early as the date of her death, and as late as June 11, 2017, the date Plaintiffs submitted a complaint alleging patient neglect and misconduct by Petitioner to the Nevada State Nursing Board, specifically requesting an investigation of Petitioner pertaining to Ms. Powell's death and medical treatment prior thereto. Plaintiffs commenced their lawsuit on February 3, 2019, 20 months after receiving inquiry notice and 8 months beyond the statute of limitations' expiration.

Plaintiffs submitted no affidavit, declaration or any sworn statement from anyone with personal knowledge of the facts to oppose Petitioner's incontrovertible evidence. Plaintiffs contended the report from Nevada HHS dated February 5, 2018

commenced the inquiry notice period, contravening the standards for same articulated by this Court. Moreover, without any proof or other sworn testimony, Plaintiffs' counsel asserted that Petitioner failed to prove his client's receipt of the medical records, despite two declarations documenting the medical records collection and mailing procedures in this case with proof that the records were mailed; Nevada law presumes that items mailed are received unless proof to the contrary is presented.

Despite no admissible evidence in opposition to the motion, and admissions of inquiry notice from the Plaintiffs' themselves, Respondent denied Petitioner's motion summary judgment, and based the decision on no supportive legal authority, and in direct contravention of established case law.

As required by NRAP 8, Petitioner moved the Respondent for a stay of all proceedings prior to filing its Petition for a Writ of Mandamus (**Exhibits "E", "F", & "G"**). In first denying the motion for a stay, Respondent determined in part Petitioner lacked of likelihood of success on the merits, and that a writ petition had not been filed (despite the fact that such a petition could not be filed until such time as Respondent decided the stay application).

In an order dated March 9, 2021, this Court directed an answer to Petitioner's writ petition, set a briefing schedule, and stated "Having reviewed the petition, it appears that an answer may assist this court in resolving this matter." (**Exhibit "C"**).

Petitioner requested that Plaintiffs stipulate to stay the matter in light of the this Court's order, but the request was refused (**Exhibit "H"**). Petitioner thereafter moved Respondent to reconsider its decision denying the first stay motion (**Exhibits "I", "J" and "K"**). Respondent summarily denied Petitioner's motion for reconsideration (**Exhibit "A"**), this time ignoring the dictates of EDCR 2.24 and NRCR Rule 54(b) and truncated portions of the rules to hold that since the motion was not made within 14 days of the Court's ruling on October 29, 2020, Petitioner's motion was untimely (despite the fact that this Court's order to direct an answer to the petition and a reply was not issued until March 9, 2021, a fact which was impossible to put forth to Respondent within the 14 day window noted in EDCR 2.24). Respondent invited Petitioner to move this Court for the very same relief.

Expert disclosures are due June 18, 2021. Clearly this Court finds worth in the arguments raised in the petition or it would not have directed an answer and reply to the petition. This Court will be determining the propriety of Respondent's decision on a case dispositive issue. There is no rational basis for forcing the parties to proceed with litigation which may well be terminated by this Court's decision on the underlying denial of summary judgment to Petitioner. Thus, a stay is the proper vehicle to pause the case while this Court considers all arguments raised by the parties pertaining to the Petition.

II. ARGUMENT

The party seeking a stay must first seek a stay from the District Court, as opposed to an appellate court. NRAP 8(a)(1)(A). Respondent denied Petitioner's request for said stay, not once, but twice (**Exhibits "A" and "B"**), thus permitting this motion before this Court. NRAP 8(a)(2)(A).

The factors to be considered by the Court when considering whether to issue a stay in the proceedings are (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP 8(c); *Fritz Hansen A/S v. Eighth Judicial District Court*, 116 Nev. 650, 657 (2000). No one factor carries more weight than any of the others, but in a particular situation, if one or two factors are especially strong, they are able to counterbalance any weaker factors. *Mikohn Gaming Corporation v. McCrea, Jr.*, 120 Nev. 248, 251 (2004) ("We have not indicated that any one factor carries more weight than the others, although . . . if one or two factors are especially strong, they may counterbalance other weak factors."). An analysis of these factors in this case shows that a stay is warranted pending resolution of Petitioner's interlocutory appeal.

Taking the fourth factor first, the likelihood of success on the merits, Respondent found that Petitioner would not likely prevail thereon. Such a conclusion is belied by this Court's order directing an answer (**Exhibit "C"**).

Petitioner believes that its motion for summary judgment should have been granted in its entirety, rendering Plaintiffs' case completely void and subject to dismissal. This is underscored by the overwhelming and incontrovertible evidence that Plaintiffs possessed inquiry notice as late as June 11, 2017, making their Complaint's filing on February 4, 2019 eight months late and beyond the statute of limitations. Absent legal authority to demonstrate that once inquiry notice is obtained, that it is somehow cancelled or tolled by unproven allegations of other potential causes for the death of Plaintiffs' decedent, Petitioner's summary judgment motion should have been granted. Plaintiffs failed to obtain any sworn statement from anyone with personal knowledge to substantiate Plaintiffs' counsel's personal allegations. As such, the irrefutable evidence submitted by Petitioner in support of its motion, Plaintiffs' absence of competent contradictory evidence, and this Court's willingness to weigh in on the denial of summary judgment, demonstrates a strong case for likelihood of success on the merits.

The first factor (whether the object of the writ petition will be defeated if the stay is denied), also weighs heavily in Petitioner's favor. While trial is not scheduled until May, 2022, **expert disclosure is less than two months away**. The issue before

this Court is a case dispositive one. If the parties must participate in discovery and trial on this issue, the object of the forthcoming writ petition would be defeated and Petitioner's expenses would be increased, as would those of all other parties.

The second factor for consideration pursuant to NRAP 8 (whether Petitioner will suffer irreparable or serious injury if the stay is denied), also weighs in favor of granting the stay. For one, medical malpractice claims create specific ongoing injuries to medical professionals in the form of insurance premiums, damage to professional reputations and reporting requirements. Forcing Petitioner to proceed to trial on both liability and damages when the issue presented on appeal only prolongs these injuries and causes further damage to Petitioner is wasteful. This Court's decision on the pending writ petition will likely answer the open questions raised and if successful, Plaintiffs' case will be dismissed, obviating any need for further discovery or expense. Secondly, the potential expenses of proceeding to trial on all issues will require the unnecessary expenditure of Petitioner's resources in having to pursue the additional discovery and continuing the process of engaging experts to defend the allegations, when the irrefutable evidence submitted on the Motion required the dismissal of all claims against all defendants.

The third factor for consideration pursuant to NRAP 8 (whether the real party in interest will suffer irreparable or serious injury if the stay is granted), also weighs in favor of granting the stay in proceedings. Plaintiffs will not suffer irreparable or

serious injury should this stay be granted. In fact, they will benefit from the stay. The stay will allow a determination of whether the case dispositive motion should have been granted and prevent the expenditure of financial and emotional resources pertaining to a claim which was dead on arrival for legal purposes at the time of its filing. This Court's decision to take up Petitioner's writ petition will definitively determine whether Respondent's decision will be affirmed or reversed. This Court will be ruling either way. Plaintiffs will have suffered no risk or injury by waiting since they will have an answer as to whether discovery should proceed or if doing so will be mooted out by a dismissal due to a late filed action.

An analysis of the above factors overwhelmingly shows that the Court should exercise its discretion to grant the stay sought by Petitioner.

III. CONCLUSION

Petitioner respectfully requests that this matter be stayed pending this Court's determination of the Writ Petition now fully briefed before it. The procedural posture of this case makes a stay the only way that the issue can be resolved sufficiently in advance of trial and to allow Petitioner to limit its expenses in preparing and trying a case which should have been dismissed in its entirety had Respondent granted Petitioner's motion for summary judgment. This Court's willingness to hear this interlocutory appeal and decide one way or the other on the

issues raised, is clear evidence that the factors supporting the issuance of a stay weigh totally in favor of the stay being granted.

DATED this 22nd day of April, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2021, a true and correct copy of **PETITIONER’S MOTION FOR STAY PENDING DECISION ON WRIT OF MANDAMUS** was served upon the following parties by electronic service through this Court’s electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

The Honorable Jerry A. Wiese II
The Eighth Judicial District Court
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By /s/ Roya Rokni

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