

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
Electronically Filed
Apr 29 2021 02:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
District Court
No.: A-19-
788787-C

**PETITIONER’S REPLY IN FURTHER SUPPORT OF MOTION FOR
STAY PENDING DECISION ON WRIT OF MANDAMUS**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs provide no substantiation or authority to demonstrate that a stay in this Court is procedurally improper or untimely. Moreover, Plaintiffs selectively ignore what is a reality in this case, namely this Court agreeing to decide the issues raised by the Writ Petition (**Exhibit “C” to Petitioner’s Appendix Vol I, pp. 15-16**). To assert that there is no likelihood of success on the merits defies all logic. If there was no likelihood of success, there would be no reason this Court would agree to rule on the issues raised in the Petition.

There is no harm Plaintiffs can articulate in awaiting this Court’s decision – none. If the stay is granted, the parties will be prevented from expending time, financial and emotional resources while this Court considers the arguments of the respective parties. If this Court affirms Respondent’s decision, the case can proceed under a new schedule for remaining discovery. However, if this Court reverses Respondent’s decision, the case is completely over since the issues raised in the Petition pertain to a case filed beyond the statute of limitations.

A fact also conveniently ignored by Plaintiffs is that Respondent invited Petitioner to move this Court for stay (**Exhibit “A” to Petitioner’s Appendix, Vol I, p. 3**).

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

As noted above, there is no authority pointed to by Plaintiffs in opposition indicating this Motion is procedurally improper.

Additionally, the four factors to which this Court looks to determine the propriety of the stay all of which weigh in favor of Petitioner, namely (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 can 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.

In this case, Plaintiffs’ opposition ignores one of the factors (fourth factor) which is especially strong, i.e., the fact that this Court has agreed to decide the propriety of Respondent’s order denying summary judgment. This case is going to be decided, one way or another, by this Court. This factor addresses the very likelihood of success on the merits argument and raises it above all others. Plaintiffs’ assertion that there is no likelihood of success belies reality.

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. Plaintiffs’ opposition ignores that **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 (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 (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 have not articulated one injury they will suffer by placing this case on hold for the time required for this Court to rule. 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.

Plaintiffs' opposition to this motion wastes considerable paper reviewing the procedural history of this case without addressing the salient issue here, namely that

5

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2021, a true and correct copy of **PETITIONER'S REPLY IN FURTHER SUPPORT OF 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 by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

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By /s/ Roya Rokni
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