

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

Electronically Filed
Feb 17 2022 10:50 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NUVEDA, LLC,

Petitioner,

vs

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE ELIZABETH
GONZALEZ, DISTRICT JUDGE,

Respondent,

SHANE TERRY,

Real Party in Interest.

Supreme Court Case No. 82767

Case: A-20-817363-B

Lead Case: A-17-755479-B

Other Consolidated Cases with Lead Case:
A-19-791405-C and A-19-796300-B

PETITION FOR REHEARING

LAW OFFICE OF MITCHELL STIPP
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Counsel for Petitioner¹

¹ A. William Maupin is co-counsel of record in this case but is now associated with Flynn Giudici, PLLC.
See Dkt. 21-34432.

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner, NuVeda, LLC, a Nevada limited liability company (“Petitioner” or “NuVeda”), filed a petition for a writ concerning the refusal of Judge Elizabeth Gonzalez in Department 11 of the Eighth Judicial District Court, State of Nevada, to dismiss the causes of action asserted by real party-in-interest, Shane Terry, or to grant summary judgment in favor of Petitioner, on the same. See Dkt. 21-10775 (“Petition”). A panel of the Nevada Supreme Court filed an order on February 16, 2022, denying the Petition. See Dkt. No. 22-05225. According to the panel’s order, “the [P]etition appears premature” because the district court did not rule on the actual motion to dismiss and/or summary judgment. See Dkt. No. 22-05225.

Initially, the district court stayed its decision on dismissal/summary judgment to provide Mr. Terry an opportunity to obtain relief from the American Arbitration Association (“AAA”). See Petition, page 9 (citing Appendix 0092-0095 (Exhibit 1 to Motion, Appendix 0085-0160) (Volume II) (Dkt. 21-10779). After the stay expired, Petitioner asked the district court to enter an order dismissing and/or granting summary judgment on Mr. Terry’s claims. Id. The district court denied Petitioner’s renewed request and refused to grant a stay. See Dkt. 21-17201 (Exhibit 1-Denying Renewed Motion and Exhibit 2-Denying Motion to Stay). The order

denying Petitioner's renewed motion should be viewed by the panel as the district court's refusal to grant the relief requested by Petitioner. In this case, *the district court is required to dismiss and/or grant summary judgment*. Petitioner understands that the Nevada Supreme Court will generally not intervene to consider writ petitions challenging district court orders denying motions to dismiss or summary judgment. State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983). However, notwithstanding this general rule as set forth in Thompson, the Nevada Supreme Court has made it clear that it "will continue to exercise its discretion with respect to certain petitions where no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action." Smith v. District Court, 113 Nev. 1343, 1345 (Nev. 1997) (footnote omitted) (emphasis added). Here, the facts are not in dispute, and clear authority (NRCp 60(b)(3) and (c)(1)) provide that the orders of dismissal by AAA cannot be set aside). Mr. Terry contends that NRCp 60(b)(4) applies. Compare Dkt. 21-21028 with Dkts. 21-10775 and 21-24157. Without intervention by the Nevada Supreme Court, Mr. Terry is being permitted to pursue claims which he sold and are res judicata. See Weddell v. Sharp, 350 P.3d 80, 86 (Nev. 2015) (modifying Five Star Capital Corp. v. Ruby, 194 P.3d 709, 713 (Nev. 2008)). This circumstance has occurred because Judge Gonzalez refused to grant dismissal/summary judgment.

While the Petition was pending, the district court case was administratively reassigned to Judge Mark Denton in Department 13 of the Eighth Judicial District Court, State of Nevada, after Judge Gonzalez retired. Mr. Terry was permitted to file an amended complaint in the district court. See Dkts. 21-23560, 21-24891, 21-24910, 21-24912, 21-25435, and 21-26334; see also Appendix in Support of Petition for Rehearing, **Exhibit 1**.² As the panel is aware, the district court has the inherent power to vacate or modify its orders at any time unless and until appealed. See Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967); see also Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000) (the district court retains jurisdiction over an order that is being challenged by way of a writ petition). Accordingly, on November 3, 2021, Petitioner filed another motion to dismiss and/or for summary judgment on claims by Mr. Terry and its exhibits in support thereof. See Appendix in Support of Petition for Rehearing, **Exhibits 2 and 3**. On November 17, 2021, Mr. Terry opposed the motion. See id., **Exhibit 4**. Petitioner filed its reply on November 29, 2021. See id., **Exhibit 5**. At a hearing on December 6, 2021, the

² The facts upon which the initial complaint is based are substantially the same as set forth in the amended complaint attached as **Exhibit 1** except Mr. Terry now claims he did not know his interest in Petitioner was transferred without his knowledge purportedly before he sold the same interest to BCP 7 Holdings, LLC. See Paragraph 331 of **Exhibit 1**.

district court considered oral arguments and took the matter under advisement. See id., **Exhibit 6**. Subsequently, the district court issued a minute order on December 21, 2021 denying the motion. See id., **Exhibit 7**. The district court (via Judge Denton) has denied Petitioner’s request for relief on Mr. Terry’s claims. Therefore, the Petition is not premature.

Petitioner respectfully requests that panel reconsider its denial under the principles articulated in Smith. The intervention by the Nevada Supreme Court would also promote judicial economy. See Helfstein v. Eighth Judicial Dist. Court of State, 362 P.3d 91 (Nev. 2015) (granting writ petition and instructing district court to vacate previous order regarding a NRCP 60(b) motion). It would continue to be an unreasonable burden to litigate claims by Mr. Terry (including completing a jury trial) when Mr. Terry’s interest (if any) was sold and any claims are res judicata (because they cannot be set aside under NRCP 60(b)).

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DATED this 17th day of February, 2022.

LAW OFFICE OF MITCHELL STIPP

/S/ MITCHELL STIPP

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CERTIFICATE OF COMPLIANCE AND VERIFICATION

1. The petition for rehearing has been prepared in a proportionally spaced typeface using Microsoft Word, Version 16.11.1, in 14 point, Times New Roman.
2. The petition for rehearing does not exceed 10 pages.
3. I hereby certify that I have read the petition for rehearing, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 21. I understand that I may be subject to sanctions in the event that the petition for rehearing is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of February, 2022, I filed the foregoing **PETITION FOR REHEARING**, using the court's electronic filing system.

Notice of the filing of the Petition was made upon acceptance by the Nevada Supreme Court using the District Court's electronic filing system to the following e-service participants in District Court Case No. A-17-755479-B and by mail to the addresses as indicated:

Judge Mark Denton:

Dept13lc@clarkcountycourts.us

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