HAYES | WAKAYAMA
DALE A. HAYES, JR., ESQ.
Nevada Bar No. 9056
LIANE K. WAKAYAMA, ESQ.
Nevada Bar No. 11313
JEREMY D. HOLMES, ESQ.
Nevada Bar No. 14379
5798 S Durango Drive, Suite 105
Las Vegas, Nevada 89113
(702) 656-0808 – Telephone
(702) 655-1047 – Facsimile
dhayes@hwlawNV.com
lkw@hwlawNV.com
jholmes@hwlawNV.com
Attorneys for Real Parties in Interest

Electronically Filed
Nov 15 2021 06:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

MINH NGUYEN, M.D.,

Petitioner,

vs.

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

Respondents,

and

PATRICIA ANN ADAMS, INDIVIDUALLY, IN HER CAPACITY AS TRUSTEE OF THE STEWART

Supreme Court Case No.: 83523

District Court Case No.:A-20-811421-C

ANSWER TO PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

Docket 83523 Document 2021-32799

FAMILY TRUST, DATED JANUARY 31, 2007, IN HER CAPACITY AS SPECIAL ADMINISTRATOR OF THE ESTATE OF CONNIE STEWART AND IN HER CAPACITY AS SPECIAL ADMINISTRATOR OF THE ESTATE OF GARY STEWART; GARY LINCK STEWART, JR., AN INDIVIDUAL; MARY KAY FALLON, AN INDIVIDUAL; ELIZABETH A. HODGE, AN INDIVIDUAL; AND EMIL MORNEAULT, RPH,

Real Party in Interest.

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. There are no corporations remaining in this case.

Patricia Ann Adams, individually and in her capacity as Trustee of The Stewart Family Trust dated January 31, 2007, in her capacity as Special Administrator of the Estate of Connie Stewart and in her capacity as Special Administrator of the Estate of Gary Stewart; Mary Kay Fallon, individually; Elizabeth A. Hodge, individually; and Gary Linck Stewart, Jr., individually.

Hayes Wakayama, attorneys Dale A. Hayes, Jr., Esq., Liane K. Wakayama, Esq. and Jeremy D. Holmes, Esq.

Dated this 15th day of November, 2021.

HAYES | WAKAYAMA

By*/s/ Dale A. Hayes, Jr., Esq.*

DALE A. HAYES, JR., ESQ.
Nevada Bar No. 9056
LIANE K. WAKAYAMA, ESQ.
Nevada Bar No. 11313
JEREMY D. HOLMES, ESQ.
Nevada Bar No. 14379
5798 S Durango Drive, Suite 105
Las Vegas, Nevada 89113
Attorneys for Real Parties in Interest

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PERTINENT FACTS. 4

III. SUMMARY OF AGRUMENT. 7

IV. LAW AND ARGUMENT. 9

A. A WRIT OF MANDAMUS SHOULD NOT ISSUE……………………10

1. Standard for Mandamus…………………………………………10

2. This Court Should Not Entertain this Writ Petition Challenging the Denial of a Motion to Dismiss Given the Substantial Factual Issues……………………………………………………… 11

3. Nguyen has a Plain, Speedy and Adequate Remedy at Law………14

B. THE DISTRICT COURT DID NOT MANIFESTLY ABUSE ITS DISCRETION IN DENYING NGUYEN'S MOTION…………………15

C. THE DISTRICT COURT DID NOT MANIFESTLY ABUSE ITS DISCRETION IN FINDING THAT THE INDIVIDUAL (HEIR) PLAINTIFFS AND GARY'S ESTATE CLAIMS' "WERE FILED WITHIN THE ONE YEAR STATUTE OF LIMITATIONS."…………16

1. Real Parties Filed Three Separate Claims Against Nguyen, Two of Which Claims Carrying a two-Year Limitation Period…………..17

2. Real Parties Did Not "Plead Around the Statute of Limitation."….18

3. The Accrual Date for the Subject Claims Is Not the Date of Gary's Death……………………………………………………………..23

D. NGUYEN IGNORED MANY ARGUMENTS ADVANCED BY REAL PARTIES DURING THE DISTRICT COURT PROCEEDINGS……………………………………………………..26

E. EVEN ON THE ONE-YEAR LIMITATION CLAIMS, NGUYEN IS NOT ENTITLED TO WRIT RELIEF. ……………………………………28

1. The District Court Properly Found Issues Of Fact To Exist Concerning The Accrual Date On The Professional Negligence Claim……………………………………………………………..28

2. Even Using the Date of Gary's Death as the Accrual Date, One of the Real Parties Still Has a Timely Professional Negligence Claim……………………………………………………………..29

F. NGUYEN'S TRUST ARGUMENT IS ERRONEOUS………………….30

V. CONCLUSION...30

TABLE OF AUTHORITIES

CASES

Allen v. Webb,
87 Nev. 261, 485 P.2d 677 (1971) 16

Beazer Homes, Nev., Inc. v. Dist. Ct.,
120 Nev. Adv. Op. 66, 97 P.3d 1132 (2004) 10

Bemis v. Estate of Bemis,
114 Nev. 1021, 1025, 967 P.2d 437 (1998) 25

Crawford v. State,
121 P.3d 582 (Nev. 2005) 10

Elwood Investors Co. v. Behme,
79 Misc.2d 910, 361 N.Y.S.2d 488 (N.Y. Sup. 1974)..10

Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC,
136 Nev. Adv. Op. 39, 466 P.3d 1263 (2020) 19, 21

Heinly v. Queen,
146 F.R.D. 102 (E.D. Pa. 1993)...27

State Employment Sec. Dept. v. Hilton Hotels Corp.,
102 Nev. 606, 729 P.2d 497 (1986)...16

Humphries v. Eighth Jud. Dist. Ct.
129 Nev. 788, 312 P.3d 484 (2013). 14

Mayes v. AT & T Info. Sys., Inc,
867 F.2d 1172 (8th Cir. 1989) 29

Moore v. Dist. Ct.,
96 Nev. 415, 610 P.2d 188 (1980) 11

Moore v. Indiana,
999 F.2d 1125 (7th Cir. 1993)....................................27

MountainView Hosp. v. Dist. Ct.,
128 Nev. 180, 273 P.3d 861 (2012)....................................8, 11, 12, 15, 24, 28

Otak Nevada, L.L.C. v. Eight Jud. Dist. Ct.,
129 Nev. 799, 312 P.3d 491 (2013)....................................13

Pan v. Dist. Ct.,
120 Nev. 222, 88 P.3d 840 (2004)....................................10, 11

Petersen v. Bruen,
106 Nev. 271, 792 P.2d 18 (1990)....................................23

Pope v. Gray,
104 Nev. 358, 760 P.2d 763 (1988)....................................24

San Diego Gas & Elec. Co. v. Superior Court,
53 Cal. Rptr. 3d 722 (2007)....................................29

SeeCo. of Washoe v. City of Reno,
77 Nev. 152, 360 P.2d 602 (1961)....................................10

Sheehan & Sheehan v. Nelson Malley and Co.,
121 Nev. 481, 117 P.3d 219 (2005)....................................16

Simpson v. Mars Inc.,
113 Nev. 188, 929 P.2d 966 (1997)....................................20, 22

Siragusa v. Brown,
114 Nev. 1384, 971 P.2d 801(1998)....................................3, 23, 24

Stafford v. Clark Const. Co.,
901 F. Supp. 232 (E.D. Tex. 1995)....................................27

Szymborski v. Spring Mountain Treatment Ctr.,
133 Nev. 638, 403 P.3d 1280 (2017)....................................3, 12, 19, 21, 22

Walker v. Second Judicial Dist. Court in & for County of Washoe,
136 Nev. Adv. Op. 80, 476 P.3d 1194 (2020) 14

Washoe County v. City of Reno,
77 Nev. 152, 360 P.2d 602 (1961) 13

Winn v. Sunrise Hosp. & Med. Ctr.
128 Nev. 246, 277 P.3d 458 (2012) 24, 25, 26

Zohar v. Zbiegien
130 Nev. 733, 334 P.3d 402 (2014) 15

STATUTES

NRS § 41A.071 22

NRS § 41A.097(2) 23

NRS § 41A.097(3) 23

NRS 11.190(4)(e)..17

NRS 34.160 10

NRS 34.170 13

NRS 41A.097 20

RULES

NRCP 8 3

NRCP 8(d)(2) 8, 17, 21

Rule 12(b)(5)..16

Rule 56 16

I. INTRODUCTION

The relevant facts in this matter are clear. While entrusted in the care of Petitioner Minh Nguyen, MD (hereinafter "Nguyen") and Emil Morneault, RPH[1] ("Morneault"), Gary Stewart ("Gary") died. Although Gary died on March 5, 2019, the District Court properly found that the subject claims against Nguyen did not accrue, for statute of limitation purposes, until July 25, 2019, or February 28, 2020. Specifically, the District Court found:

> The accrual date for all causes of action was either July 25, 2019 or February 28, 2020;
>
> No matter which date is used as the accrual date, the claims brought by the Complaint are not time barred . . .[2]

Additionally, the District Court properly found that Real Parties in Interest[3] ("Real Parties") were entitled to plead in the alternative, that their complaint sufficiently pled their alternative theories of relief and that it was too early in the

---

[1] Although Morneault is a named defendant in the District Court action, he is not a party to the instant writ petition.

[2] Petitioner's Appendix at Volume II ("PAII") at 284, *ll* 10-13.

[3] Real Parties in interest are Patricia Ann Adams ("Patti"), individually, in her capacity as Trustee of The Stewart Family Trust dated January 31, 2007, in her capacity as Special Administrator of the Estate Of Connie Stewart ("Connie's Estate") and in her capacity as Special Administrator of the Estate Of Gary Stewart ("Gary's Estate"), Gary Linck Stewart, Jr., Mary Kay Fallon and Elizabeth A. Hodge.

case to determine whether the allegations sounded in professional negligence or simple negligence. The District Court found:

> The First Amended Complaint filed by the Plaintiffs in this matter on March 19, 2021 (hereinafter the "Complaint") is sufficiently plead;
>
> The Court finds that it is too early in this case to determine whether or not the allegations sound in professional negligence or simple negligence . . .[4]

Nguyen ignored the foregoing facts during the District Court proceedings and continues to ignore them in his pending Petition. Instead, Nguyen argues to this Court that "[t]his is a professional negligence case,"[5] that the accrual date was the day Gary passed away[6] and that "the issue is not fact-bound."[7] Indeed, in the mandated NRAP 21(a)(5) Affidavit, Nguyen's counsel testified as follows:

> [t]his Affidavit is not made by Petitioner personally **because the salient issues involve procedural developments and legal analysis**.[8]

The foregoing assertions are false. This is not "a professional negligence case." While Real Parties have certainly alleged professional negligence as a potential

---

[4] PAII, 284.

[5] Petition, p. 11.

[6] *Id.*

[7] Petition, p. 15.

[8] *Id.,* p. 9 (emphasis added).

theory of recovery, they have also alleged wrongful death and simple negligence theories of relief. Such alternative pleading is expressly permitted by NRCP 8. More importantly, the question of whether Real Parties' claims sound in simple or professional negligence is clearly not a question that should be decided in Rule 12(b)(5) proceedings. Indeed, this Court has recognized:

> [t]he distinction between medical malpractice and negligence may be subtle in some cases, and parties may incorrectly invoke language that designates a claim as either medical malpractice or ordinary negligence, when the opposite is in fact true. *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 642, 403 P.3d 1280, 1285 (2017).

Similarly, the accrual date for the subject claims is absolutely a "fact-bound" question.

> When the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of a cause of action **is a question of fact for the trier of fact**. *Siragusa v. Brown*, 114 Nev. 1384, 1393, 971 P.2d 801, 807 (1998) (internal citations omitted) (emphasis added).

During the District Court proceedings, Real Parties presented a declaration from Gary's daughter, Patti, who testified that Real Parties were not able to secure Gary's medical records or otherwise receive any explanation as to the cause of Gary's death until July 25, 2019.[9] Nguyen not only failed to dispute the foregoing testimony, but simply ignored it. The foregoing issues are simple, yet Nguyen chooses to ignore

[9] PAII, 235-237.

them and instead submit a Petition predicated upon a manufactured fact pattern. Contrary to Nguyen's assertions otherwise, the "salient issues" in this writ proceeding do not "involve procedural developments and legal analysis." Rather, the salient issues clearly involve factual questions that the District Court properly ruled upon, particularly in a Rule 12(b)(5) proceeding.

Nguyen's Petition should be denied; it totally ignores the relevant factual issues in this case and instead asks this Court to order extraordinary relief based upon technicalities arising from manufactured facts.

II. PERTINENT FACTS.[10]

Gary was 80 years old with a seizure history when he was admitted to Encompass Health Rehabilitation Hospital ("Encompass") on February 13, 2019. He was admitted to Encompass for physical therapy unrelated to his seizure condition. Upon being admitted, Gary's seizure condition was documented and Encompass was provided with a list of all three of Gary's anti-seizure medications. While an admitted patient at Encompass, Gary had a seizure on February 21, 2019. On March 5, 2019, Gary passed away. As testified to by Patti, Gary's family was promised an investigation and an explanation as to what happened to their father.

[10] In addition to specific references to Petitioner's Appendix, the facts of this Answer are supported by the Declaration of Patti at PAII, 235-37.

Nguyen advised Adams that he would personally perform an inquiry into the issue and thereafter provide Adams and her family with an explanation. Despite Adams repeated follow-up calls to Nguyen, Nguyen refused to take her calls and refused to call her back. Moreover, when family members visited Encompass to collect Gary's belongings, nobody from Encompass would communicate with them at all. In short, Encompass and Nguyen refused to provide Gary's family members (Real Parties) with any information concerning the cause of Gary's death.

Real Parties are not doctors. Real Parties do not practice in the health care industry. Because of Nguyen's silence and refusal to provide Gary's medical records, Real Parties immediately retained attorney Doug Cohen, Esq. Doug Cohen is not a doctor. Real Parties were forced to seek a court order to obtain Gary's medical records, which was entered on June 26, 2019.[11] Real Parties did not receive a complete set of Gary's medical records until July 25, 2019. Mr. Cohen then hired a medical professional, Diana Koin, MD, to review Gary's medical records. On February 28, 2020, Dr. Koin completed a Gary wherein she opined that the defendant physicians, including Nguyen, committed negligence that caused Gary's death.[12] Therefore, Real Parties did not learn of Nguyen's reckless and negligent conduct

[11] PAII, 239-240.

[12] PAI, 7-9.

until approximately February 28, 2020. In fact, the earliest Real Parties could have known about Nguyen's misconduct would have been sometime after July 25, 2019, the date upon which Real Parties finally received their father's medical records.

Upon obtaining Gary's medical records, it became clear to Real Parties that Gary's death was caused by the wrongful conduct of Nguyen and Morneault. On February 28, 2020, Connie Stewart ("Connie"), Gary's surviving wife, filed a Complaint on behalf of her deceased husband.[13] Connie's lawsuit alleged negligence, wrongful death and medical malpractice against Nguyen for his role in Gary's death.[14] On June 9, 2020, Connie passed away, and a Suggestion of Death was filed on June 24, 2020.[15] Thereafter, Patti substituted into the lawsuit via stipulation as the Special Administrator of Connie's Estate. On December 21, 2020, Connie's Estate filed a motion for leave to amend the complaint to add Patti, individually, Patti's three siblings as well as Gary's Estate as plaintiffs.[16] Significantly, attached to the foregoing motion was a copy of the proposed First

---

[13] PAI, 2-9.

[14] *Id.*

[15] PAI, 19-22.

[16] PAI, 41-63.

Amended Complaint.[17] In opposing the foregoing motion to amend, both Nguyen and Morneault asserted the same factual and limitation arguments being advanced in the instant writ proceedings. The District Court rejected these arguments and granted the motion for leave to amend.[18]

On March 19, 2021, Real Parties filed their First Amended Complaint.[19] Although the First Amended Complaint did add plaintiffs to the lawsuit, the causes of action did not change. Just like Connie's initial lawsuit, the First Amended Complaint sought relief for negligence, professional negligence and wrongful death against Nguyen.[20] The foregoing amendments were effectuated through either stipulation or court order. The District Court's ruling on the motion to amend is not subject to the instant writ proceedings.

III. **SUMMARY OF AGRUMENT.**

Extraordinary relief is not appropriate in this case. As a threshold matter, this Court has repeatedly held that it will not entertain writ petitions challenging the denial of a motion to dismiss unless the issue is "not fact-bound and involves an

---

[17] PAI, 50-59.

[18] PAII, 168-176.

[19] PAI, 155-166.

[20] *Id.*

unsettled and potentially significant, recurring question of law.' *MountainView Hosp. v. Dist. Ct.*, 128 Nev. 180, 185, 273 P.3d 861, 864–65 (2012). The issue germane to these proceedings are highly factual and therefore not subject to writ relief. Moreover, Nguyen has a plain, adequate and speedy remedy at law (*i.e.,* an appeal at the conclusion of the case concerning the factual issues). The District Court did not manifestly abuse its discretion with any of its findings or rulings. The proper standard of review for the District Court's factual findings is the clearly erroneous standard, not *de novo* as argued by Nguyen. Real Parties asserted three alternative theories of relief against Nguyen: (1) simple negligence; (2) professional negligence; and (3) wrongful death. Such alternative pleading is expressly permitted under NRCP 8(d)(2), which states, in relevant part: "[a] party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones." While professional negligence claims have one-year limitation periods, simple negligence and wrongful death claims have two-year periods. Moreover, the date of discovery of the injury is not always the date that a clam will accrue for limitation purposes. Nevada clearly recognizes the "discovery rule" which operates to toll limitation periods until the injured party discovers or reasonably should have discovered facts supporting a cause of action. In light of the District Court's findings relative to the discovery rule and the accrual date, Real Parties' claims are not time barred. Moreover, Real Parties' professional

negligence claims, *subject to a one-year limitation period*, are also timely given the District Court's findings and the filing of Real Parties' Motion to Amend. Nevada law is clear that claims against medical professionals whose negligence was obvious, basic, and rooted in common knowledge, could be pursued as simple negligence claims, rather than professional negligence. Real Parties properly alleged simple negligence against Nguyen and his efforts at rearguing the underlying facts, particularly in writ proceedings, is improper. Nguyen's arguments are predicated upon a manufactured fact pattern and his request for extraordinary relief should be denied.

IV. <u>LAW AND ARGUMENT.</u>

In the Petition, Nguyen asserts five arguments in support of his request for a Writ of Mandamus: (1) a Writ of Mandamus should issue in this case; (2) the District Court "manifestly abused its discretion" by denying Nguyen's Motion to Dismiss; (3) the District Court "manifestly abused its discretion" by finding that the four "new heir plaintiffs" claims were filed within the one-year limitation period; (4) the District Court "manifestly abused its discretion" by finding that Gary's Estate's claim was filed within the one-year limitation period; and (5) the District Court "manifestly abused its discretion" by finding that the Trust could bring a wrongful death claim. As set forth below, Nguyen's arguments are without merit and the Petition should be denied.

A. A WRIT OF MANDAMUS SHOULD NOT ISSUE.

1. <u>Standard for Mandamus.</u>

A writ of mandamus is an extraordinary remedy. Such a writ is only available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control manifest abuse of discretion.[21] An abuse of discretion occurs if the district court's decision is arbitrary and capricious or if it exceeds the bounds of law or reason.[22] "Arbitrary and capricious" is defined as a willful and unreasonable action without consideration or in disregard of the facts or law, or without a determining principle.[23] This Court has consistently held that an appeal is an adequate legal remedy precluding writ relief.[24] Even if the appellate process would be more costly and time consuming than a mandamus proceeding, it is still an adequate remedy.[25] In that regard, this Court avoids piecemeal appellate review and seeks to review possible errors only after the District Court has entered

---

[21] *See Beazer Homes, Nev., Inc. v. Dist. Ct.*, 120 Nev. Adv. Op. 66, 97 P.3d 1132, 1135 (2004); NRS 34.160.

[22] *Crawford v. State*, 121 P.3d 582, 585 (Nev. 2005) (citation omitted).

[23] *Elwood Investors Co. v. Behme*, 79 Misc.2d 910, 913, 361 N.Y.S.2d 488, 492 (N.Y. Sup. 1974).

[24] *Pan v. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

[25] *SeeCo. of Washoe v. City of Reno*, 77 Nev. 152, 156, 360 P.2d 602 (1961).

a final judgment.[26] Petitioners always bear the burden of demonstrating that extraordinary relief is warranted.[27]

2. This Court Should Not Entertain this Writ Petition Challenging the Denial of a Motion to Dismiss Given the Substantial Factual Issues.

Unless, the issue is purely legal, this Court does not entertain writ petitions challenging the denial of a motion to dismiss where the issues involved are factual in nature.

> 'Normally, this court will not entertain a writ petition challenging the denial of a motion to dismiss but ... may do so where ... the issue is not fact-bound and involves an unsettled and potentially significant, recurring question of law.' *MountainView*, 128 Nev. at 185, 273 P.3d at 864–65.

Although Nguyen acknowledges the foregoing principle in his Petition, he strategically ignores the same by falsely asserting that the issues before this Court are "not fact-bound." As thoroughly set forth herein, the accrual date for a cause of action is highly fact-intensive. In the District Court proceedings, Real Parties submitted declaration testimony concerning the accrual date issue.[28] This testimony was not only ignored and undisputed by Nguyen, but testimony that must be

---

[26] *Moore v. Dist. Ct.*, 96 Nev. 415, 417, 610 P.2d 188, 189 (1980).

[27] *Pan,* 120 Nev. at 228, 88 P.3d at 844.

[28] PAII, 235-37.

accepted as true under Rule 12(b) analysis. Moreover, the question of whether Real Parties' allegations sound in simple or professional negligence is also highly factual and will certainly require discovery to flush out the same.

> Medical malpractice is but a species of negligence and no rigid analytical line separates the two. Given the subtle distinction, a single set of circumstances may sound in both ordinary negligence and medical malpractice, and an inartful complaint will likely use terms that invoke both causes of action . . . *Szymborski*, 133 Nev. at 642–43, 403 P.3d at 1285 (internal quotation marks omitted).

The District Court correctly found:

> [t]he Court finds that it is too early in this case to determine whether or not the allegations sound in professional negligence or simple negligence . . .[29]

In his Petition, Nguyen challenges the denial of his motion to dismiss predicated upon the District Court's findings relative to the accrual of Real Parties' claims. Nguyen further asserts that because Real Parties' case "is a professional negligence case," no factual analysis of Real Parties' other validly pled claims should be considered. All of the foregoing issues are highly factual and this Court should therefore deny Nguyen's Petition. *MountainView*, 128 Nev. at 185, 273 P.3d at 864–65.

---

[29] PAII, 284.

3. Nguyen has a Plain, Speedy and Adequate Remedy at Law.

Mandamus is not appropriate if the petitioner has "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. Generally, an adequate legal remedy is afforded through the right to appeal. *Otak Nevada, L.L.C. v. Eight Jud. Dist. Ct.*, 129 Nev. 799, 804, 312 P.3d 491, 495 (2013). A remedy does not fail to be speedy and adequate, because, by pursuing it through the ordinary course of law, more time probably would be consumed than in a mandamus proceeding.[30] *Washoe County,* 77 Nev. at 156, 360 P.2d at 603.

Once again, the issues that are the subject of this appeal are highly factual, not legal as Nguyen suggests. There is no question that Nguyen's conduct caused Gary's death. He did not make a wrong decision in prescribing one medication over another. He did not make a judgment error concerning dosage. He was aware of Gary's seizure diagnosis, was aware that Gary required seizure medication, was aware Gary was on a specific regimen of seizure medication and simply forgot to give Gary his medication. Real Parties should be permitted to flush out the issues in discovery and have their day in court. Nguyen will always have his right to appeal,

---

[30] It is important to emphasize that even if Nguyen's underlying Motion were granted in its entirety, Nguyen would remain a defendant and the lawsuit would proceed. Nguyen's arguments that he would be prejudiced by being "forced to defend this case and proceed to trial" should be ignored. Petition, p. 6.

which would "be preferable to an extraordinary writ proceeding because we can issue a decision after "review[ing] the entire record in the regular way, when [we] can enjoy the advantage of having the whole case before us." *Walker*, 136 Nev. Adv. Op. 80, 476 P.3d at 1197.

Nguyen next asserts the case of *Humphries v. Eighth Jud. Dist. Ct.*[31] for the proposition that writ relief is appropriate in this case.[32] Nguyen argues that *Humphries* supports his request for extraordinary relief because "improperly adding six parties to the case will change the entire course of litigation for this matter."[33] A cursory review of the *Humphries* opinion reveals that *Humphries* does not stand for the foregoing proposition. In this case, Real Parties have not added "improper parties." In fact, the District Court granted a prior motion to amend which is not at issue in this appeal. Next, the basis for the writ relief from *Humphries* primarily concerned "confusion" between Nevada's comparative negligence statute and a new case called *Café Moda*.

Contrary to the suggestion of Nguyen, in determining that entertaining the writ was proper, *Humphries* did not focus on prejudices that may flow from costs

---

[31] 129 Nev. 788, 312 P.3d 484 (2013).

[32] Petition, p. 13.

[33] Petition, p. 13.

associated with additional parties being added to a lawsuit, but rather, the validity of a district court order directing a plaintiff to add a cotortfeasor pursuant to Nevada's recently amended comparative negligence statute. *Id.,* 129 Nev. at 792, 312 P.3d at 487. Accordingly, a writ of mandamus is not appropriate in this case.

B. THE DISTRICT COURT DID NOT MANIFESTLY ABUSE ITS DISCRETION IN DENYING NGUYEN'S MOTION.

Nguyen's argues that a *de novo* standard of review is appropriate with his requested writ.[34]

> This Court should review the District Court's legal conclusions *de novo* when analyzing its denial of Dr. Nguyen's Motion to Dismiss.[35]

In support of his foregoing assertion, Nguyen cites to the case of *Zohar v. Zbiegien*.[36] The *Zohar* opinion set forth the standard of review for challenging the *granting* of a motion to dismiss, not the denial of one. *Zohar*, 130 Nev. at 736, 334 P.3d at 404. As set forth above, "this court will not entertain a writ petition challenging *the denial* of a motion to dismiss" unless "the issue is not fact-bound and involves an unsettled and potentially significant, recurring question of law." *MountainView*, 128 Nev. at 185, 273 P.3d at 864–65. Because the issues germane to this appeal are highly

---

[34] Petition, p. 16.

[35] *Id.*

[36] 130 Nev. 733, 334 P.3d 402 (2014).

factual in nature, there is no appropriate standard of review. However, given that the District Court's ruling was driven by its factual findings, the only appropriate standard of review would be the clearly erroneous standard.

This Court will not disturb a district court's findings of fact unless they are clearly erroneous and not supported by substantial evidence. *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 486, 117 P.3d 219, 223 (2005) (citation omitted). Where there is substantial evidence in record to support the lower court's findings they will not be disturbed despite suspicions and doubts based upon conflicting evidence. *Allen v. Webb*, 87 Nev. 261, 485 P.2d 677 (1971).

As set forth herein, Real Parties submitted substantial undisputed evidence concerning the accrual date of the subject causes of action. Nguyen ignored this evidence and failed to address it. Certainly, "a reasonable mind might accept" Real Parties evidence "as adequate to support a conclusion." *See Hilton Hotels Corp.*, 102 Nev. at 608, 729 P.2d at 498. Whether this Court determines that the District Court analyzed the Motion under Rule 12(b)(5) or Rule 56, the foregoing evidence would either need to be accepted as true, or viewed in a light most favorable to Real Parties. Either way, Nguyen cannot even approach his burden to establish that the District Court's findings were clearly erroneous.

C. THE DISTRICT COURT DID NOT MANIFESTLY ABUSE ITS DISCRETION IN FINDING THAT THE INDIVIDUAL (HEIR) PLAINTIFFS AND GARY'S ESTATE CLAIMS' "WERE FILED

WITHIN THE ONE YEAR STATUTE OF LIMITATIONS."

Nguyen's "one year statute of limitation" argument is comprised of three sub-arguments: (1) Real Parties three alternative claims are actually one professional negligence claim subject to a one-year limitation period; (2) Real Parties alternative claims are an attempt to "plead around the statute of limitations"; and (3) the one-year limitation period accrued upon the death of Gary. As set forth below, Nguyen's argument lack merit and do not support the granting of extraordinary relief.

1. <u>Real Parties Filed Three Separate Claims Against Nguyen, Two of Which Claims Carrying a two-Year Limitation Period.</u>

Nguyen's third and fourth arguments are both confusing and completely ignore Real Parties' properly alleged claims for simple negligence and wrongful death. He once again ignores these claims and asks the Court to treat this case as "a simple professional negligence case." He also ignores the "discovery rule" for limitation purposes and once again ignores Rule 8 and Real Parties' right to assert claims in the alternative. Such alternative pleading is expressly permitted under NRCP 8(d)(2), which states, in relevant part: "[a] party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones." The statutes of limitation for simple negligence and wrongful death are two years. NRS 11.190(4)(e). The District Court properly found that the accrual date for all of Real Parties' claims "was either July

25, 2019 or February 28, 2020."[37] Accordingly, given that Real Parties filed their First Amended Complaint on March 19, 2021, all of the foregoing claims are clearly timely brought.

2. Real Parties Did Not "Plead Around the Statute of Limitation."

Nguyen next argues that the:

> new Plaintiffs attempted to plead around the statute of limitations in the First Amended Complaint and alleged that they had a plain negligence claim pursuant to the *Curtis* case.[38]

This argument, once again, is misleading and ignores the record. First, even the initial complaint maintained simple negligence and wrongful death claims in addition to a professional negligence claim.[39] Next, Real Parties properly sought leave to amend in adding the additional plaintiffs. The District Court granted Real Parties' Motion and Nguyen did not appeal or otherwise seek writ relief in connection with the same. Real Parties did not "attempt to plead around the statutes of limitation" but filed timely and valid claims against Nguyen.

Real Parties' claims against Nguyen for negligence and wrongful death are based on statutory law and theories of simple negligence in accordance with the

---

[37] PAII, 284.

[38] Petition, p 18.

[39] PAI, 2-4.

decisions reached in several recent Nevada Supreme Court decisions. *See Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263, 1267 (2020); *see also Szymborski,* 133 Nev. at 644, 403 P.3d at 1286. In those cases, the Nevada Supreme Court found that claims against medical professionals whose negligence was obvious, basic, and rooted in common knowledge, could be pursued as simple negligence claims, rather than professional negligence. That is exactly what Real Parties alleged in this case:

> 42. Defendant's acts in failing to provide Decedent his known and necessary medication regiment constitutes simple negligence. *See Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (2020).
>
> 43. Defendant's acts in absent mindedly discontinuing one appropriate medication constitutes simple negligence. *See Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (2020).
>
> 44. "Common knowledge" establishes that Defendants' acts and omissions constitute negligence. It does not take an expert to know that failing to fill and administer known prescription medications is negligence. *See Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. Adv. Op. 39, 466 P.3d 1263 (2020).
>
> 45. Defendants' conduct in failing to provide known necessary medications, discontinuing one known necessary medication and further failing to administer any medications at all despite knowledge of an existing condition with required medications does not raise questions of mental judgment beyond the realm of common knowledge and experience. *See Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*,

> 136 Nev. Adv. Op. 39, 466 P.3d 1263 (2020).[40]

The District Court was required to accept the foregoing allegations as true, *Simpson,* 113 Nev. at 190, 929 P.2d at 967, or, at the very least, in a light most favorable to Real Parties. Nguyen makes the erroneous argument that:

> [t]here can be no question that the Plaintiffs' claims are for professional negligence. A claim is a professional negligence claim that is subject to NRS 41A.097 if it is related to medical diagnosis, judgment, or treatment.

To the contrary, the District Court expressly found that Real Parties properly plead their various theories of relief pursuant to Rule 8. Nguyen did not appeal these *factual* findings. Nguyen did not address Real Parties' complaint allegations in his Petition. He simply makes manufactured factual arguments that were rejected during the District Court proceedings. For instance, Nguyen argues:

> Plaintiffs allege that Dr. Nguyen fell below the standard of care by prescribing the incorrect seizure medication regime for him.[41]

This is simply not true. Real Parties alleged:

> Defendant's acts in failing to provide Decedent his known and necessary medication regiment constitutes simple negligence.
>
> "Common knowledge" establishes that Defendants' acts and omissions constitute negligence. It does not take an expert to know that failing to fill and administer known prescription medications is negligence.

---

[40] PAI, 155-66.

[41] Petition, p. 19.

> Defendants' conduct in failing to provide known necessary medications, discontinuing one known necessary medication and further failing to administer any medications at all despite knowledge of an existing condition with required medications does not raise questions of mental judgment beyond the realm of common knowledge and experience.[42]

Real Parties unequivocally alleged facts outside the realm of medical judgment that establish a simple negligence claim. Nguyen's factual arguments, *despite arguing the only issues before this Court are legal*, are predicated upon a manufactured fact pattern.

Real Parties' wrongful death and negligence claims are being asserted alongside their medical malpractice claim as it has yet to be determined whether the physician defendants' negligence was professional negligence or simple negligence. The District Court agreed with the foregoing. Such alternative pleading is expressly permitted under NRCP 8(d)(2).

Despite Nguyen's status as a medical professional, Real Parties have alleged that his conduct can be characterized as simple negligence as is permitted by *Szymborksi* and *Curtis*. During the dismissal proceedings, Real Parties argued that discovery had barely begun, rendering any determination concerning the ultimate facts wholly premature. Significantly, Nguyen is asking this Court to ignore the

---

[42] PAI, 155-66.

applicable standard of review. Nguyen is arguing that the allegations in ***Real Parties'*** First Amended Complaint should be construed in the manner that Nguyen wishes, rather than in a light most favorable to Real Parties. *See Simpson*, 113 Nev. at 190, 929 P.2d at 967. Real Parties alternatively alleged that Nguyen engaged in simple negligence, rather than professional negligence, and that allegation must be accepted as true. *See Szymborski*, 133 Nev. at 644, 403 P.3d at 1286 ("We note that there are allegations in Szymborski's first claim that could involve medical diagnosis, treatment, and judgment. Regardless, at this stage of the proceedings this court must determine whether there is any set of facts that, if true, would entitle Szymborski to relief and not whether there is a set of facts that would not provide Szymborski relief.").

Nguyen also makes the argument that Real Parties have conceded that they are claiming only professional negligence by attaching a NRS § 41A.071 affidavit to their pleading. This assertion is erroneous. As they are expressly permitted to do by Rule 8, Real Parties alleged alternative theories of relief against Nguyen (professional negligence, wrongful death and simple negligence), and the fact that an affidavit was submitted to support the professional negligence claim does not void Real Parties' remaining claims for relief. Moreover, it is entirely possible that Nguyen engaged in both professional and simple negligence with his care and treatment of Gary.

3. <u>The Accrual Date for the Subject Claims Is Not the Date of Gary's Death.</u>

Although Nguyen correctly points out that the limitation period for a professional negligence claim is one year (NRS § 41A.097(2)), Nguyen glosses over the significance of the accrual date in analyzing a limitations argument. The relevant language from Chapter 41A provides as follows:

> **[e]xcept as otherwise provided in subsection 3**, **an action for injury or death against a provider of health care may not be commenced more than** . . . 1 year after the plaintiff discovers **or through the use of reasonable diligence should have discovered the injury**, whichever occurs first . . . NRS § 41A.097(2) (emphasis added).

Significantly, subsection 3's exception provides as follows:

> [t]his time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care. NRS § 41A.097(3).

The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought. *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990) (citing *Siragusa*, 114 Nev. at 1392, 971 P.2d at 806). However, Nevada recognizes an exception to the general rule "in the form of the so-called 'discovery rule.'" *Id.*

> Under the discovery rule, the statutory period of limitations is tolled until the injured party discovers **or reasonably should have discovered facts supporting a cause of action**. *Id.* (emphasis added).

The "discovery rule" also applies in wrongful death/medical malpractice cases.

> [W]e conclude that the two-year statutory period for wrongful death medical malpractice actions does not begin to run until the plaintiff discovers or reasonably should have discovered the legal injury, i.e., both the fact of death and the negligent cause thereof. *Pope,* 104 Nev. at 362, 760 P.2d at 765.

Next, and dispositive of Nguyen's argument,

> [w]hen the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of a cause of action **is a question of fact for the trier of fact**. *Siragusa*, 114 Nev. at 1393, 971 P.2d at 807 (internal citations omitted) (emphasis added)).

The foregoing is dispositive of Nguyen's position as the District Court made factual findings relative to the accrual date. Writ petitions are not appropriate for challenging orders denying dismissal where factual issues are involved. *MountainView*, 128 Nev. at 185, 273 P.3d at 864–65.

The case of *Winn v. Sunrise Hosp. & Med. Ctr.*[43] presents a stinkingly similar fact pattern. In *Winn*, a 13–year–old girl underwent heart surgery on December 14, 2006. *Winn*, 128 Nev. at 249, 277 P.3d at 460. On the day after her surgery, the patient's father was informed that she had suffered an "extensive brain injury" during the surgery. *Id.* Just like in this case,

> [i]n conveying this news to Winn, the doctors were unable to provide an explanation for how this tragic result arose from what was considered to be a relatively minor surgery. *Id.*

[43] 128 Nev. 246, 277 P.3d 458 (2012).

Just like in this case, the defendants asserted the date of the discovery of the injury as the triggering date and filed motions to dismiss based on the one-year limitation period. *Id.,* 128 Nev. at 250, 277 P.3d at 461. The district court agreed with the moving physicians from *Winn*, concluded that the day the injury was discovered (the day after surgery) was the relevant date and granted the motions to dismiss. *Id.* On appeal, the *Winn* Court held that the physician's inability to provide "an explanation for the surgery's catastrophic result" was not enough to place the Winn's on notice that negligence had occurred. *Id.,* 128 Nev. at 253, 277 P.3d at 463. "[R]espondents' failure to provide Winn with an explanation is not, in and of itself, a tacit acknowledgment of negligence." *Id.*

The *Winn* Court emphasized that the determination of the accrual date for purposes of statute of limitation analysis is generally a question of fact, and only "a question of law only if the facts are uncontroverted." 128 Nev. at 253, 277 P.3d at 463; *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998) ("Dismissal on statute of limitations grounds is only appropriate 'when uncontroverted evidence irrefutably demonstrates plaintiff discovered or should have discovered' the facts giving rise to the cause of action.")). Just like the District Court found in this lawsuit, the *Winn* Court found that the cause of action accrued on the date that the physician defendants provided the patient's family with the medical records. *Winn*, 128 Nev. at 253, 277 P.3d at 463.

> **the date when he received the initial 182 pages of medical records** . . . at the latest, Winn and his attorney had access to facts that would have led an ordinarily prudent person to investigate further into whether Sedona's injury may have been caused by someone's negligence. *Id.*

During the dismissal proceedings, Real Parties argued that the triggering date for their claims would not have accrued until July 25, 2019, the date Real Parties received Gary's medical records, or February 28, 2020, the date Real Parties' expert first opined that Nguyen's negligence caused Gary's death. Consistent with the foregoing holding from *Winn*, the District Court found:

> The accrual date for all causes of action was either July 25, 2019 or February 28, 2020;
>
> No matter which date is used as the accrual date, the claims brought by the Complaint are not time barred;[44]

Just as the Winn Court found, the triggering date is the date the plaintiffs obtain inquiry notice of actual negligence, not notice of an unexplained injury.

D. NGUYEN IGNORED MANY ARGUMENTS ADVANCED BY REAL PARTIES DURING THE DISTRICT COURT PROCEEDINGS.

As set forth above, Real Parties claims did not accrue until July 25, 2019 or February 28, 2020. During the District Court proceedings, Real Parties asserted several arguments that Nguyen ignored and that the District Court must have

---

[44] PAII, 284.

accepted. Specifically, "the filing of a motion to amend along with a proposed amended complaint[45] tolls the statute of limitations."[46] The Seventh Circuit has agreed and found that "[a]s a party has no control over when a court renders its decision regarding the proposed amended complaint," it follows that the statute of limitations shall be tolled when a motion for leave to amend is filed. *Moore v. Indiana*, 999 F.2d 1125, 1131 (7th Cir. 1993). Other courts across the country have also reached the same conclusion. *See Stafford v. Clark Const. Co.*, 901 F. Supp. 232 (E.D. Tex. 1995); *Heinly v. Queen*, 146 F.R.D. 102, 104 (E.D. Pa. 1993). In this case, Plaintiffs' Motion for Leave to Amend was filed on December 21, 2020.[47]

---

[45] Indeed, although Nevada courts have never ruled on the issue, "[a] number of courts have addressed the situation where the petition for leave to amend the complaint has been filed prior to the expiration of the statute of limitations, while the entry of the court order and the filing of the amended complaint have occurred after the limitations period has expired." *Mayes v. AT&T Information Sys., Inc.*, 867 F.2d 1172, 1173 (8th Cir. 1989) (citing *Rademaker v. E.D. Flynn Export Co.*, 17 F.2d 15, 17 (5th Cir. 1927)).

[46] The underlying rationale for these holdings is an inherent notion of fairness and justice. Those same principles are certainly embraced by Nevada courts and Nevada law. The Nevada Supreme Court has endorsed the view that "NRCP 15(a) requires courts to err on the side of caution and permit amendments that appear arguable or even borderline, because denial of a proposed pleading amendment amounts to denial of the opportunity to explore any potential merit it might have had." *Gardner on Behalf of L.G. v. Eighth Judicial Dist. Court in & for County of Clark*, 133 Nev. 730, 732, 405 P.3d 651, 654 (2017).

[47] PAI, 41-63.

A formal order granting that Motion was not filed until March 31, 2021.[48] As such, because the First Amended Complaint was filed on March 19, 2021, during the time in which the statute of limitations was tolled, Real Parties' amended pleading is clearly timely.

Finally, without asserting any supporting caselaw, Nguyen argued that "there was no claim of concealment." This argument is erroneous as Real Parties clearly asserted evidence of concealment during the District Court proceedings. Nguyen asserted no legal authority and provided no analysis in support of his argument and cannot be permitted to do so in his Reply brief on appeal.

E. EVEN ON THE ONE-YEAR LIMITATION CLAIMS, NGUYEN IS NOT ENTITLED TO WRIT RELIEF.

1. The District Court Properly Found Issues Of Fact To Exist Concerning The Accrual Date On The Professional Negligence Claim.

As set forth above, the District Court found that the accrual date was one of two dates (July 25, 2019 or February 28, 2020). The foregoing factual finding should not be subject to writ relief. *MountainView*, 128 Nev. at 185, 273 P.3d at 864–65. If the evidence ultimately reveals that the appropriate date is February 28, 2020, then all of the professional negligence claims were filed timely as the Motion to Amend,

[48] PAII, 168-76.

together with the proposed First Amended Complaint, was filed on December 21, 2020.[49] "In such cases, the amended complaint is deemed filed within the limitations period." *Mayes,* 867 F.2d at 1173. Accordingly, Nguyen's writ should be denied.

2. Even Using the Date of Gary's Death as the Accrual Date, One of the Real Parties Still Has a Timely Professional Negligence Claim.

No matter what, at least one of the individual heirs' professional negligence claim would relate back to the initial filing date and therefore be timely. ***Time-barred*** claims asserted by new plaintiffs relate back to the original complaint unless the amended claims "seek[] to enforce an independent right or to impose greater liability against the defendants." *San Diego Gas & Elec. Co. v. Superior Court*, 53 Cal. Rptr. 3d 722, 725 (2007). As this Court is aware, this lawsuit was initially filed by Connie, Gary's surviving wife and heir. Connie initially filed all of the same claims currently being asserted by Gary's other heirs. Because substituting one heir in to prosecute the same professional negligence claim previously asserted by a different heir will not "enforce an independent right or impose greater liability against the defendants," the professional negligence claim of at least one heir would relate back and be timely. *See id.*

[49] PAI, 41-63.

F. NGUYEN'S TRUST ARGUMENT IS ERRONEOUS.

Nguyen's final argument is that the District Court "manifestly abused its discretion by finding that the Stewart Family Trust could bring a wrongful death claim."[50] The Stewart Family Trust ("Trust") was not included as a plaintiff on the wrongful death claim in the First Amended Complaint.[51] Gary's Will is a pour-over Will as it bequeaths his estate to the Trust. The individual plaintiffs, in turn, are the beneficiaries of the Trust. The Trust is simply listed in this action as the Trust is the beneficiary of Gary's Estate due to Gary's pour-over Will. Including the Trust as a plaintiff was/is merely a formality. Moreover, the issue is irrelevant and moot as including the Trust does not permit a double recovery. Notwithstanding the same, the First Amended Complaint does not list the Trust as a plaintiff under the wrongful death claim.[52] Nguyen's argument is therefore erroneous as it is predicated upon a false foundation, i.e., that the Trust is seeking relief for wrongful death.

V. CONCLUSION.

There is no compelling reason for the Court to intervene in the Parties' dispute by issuing an extraordinary writ. Nguyen has not presented any substantial issue of

---

[50] Petition, p. 25.

[51] PAI, 162.

[52] *Id.*

public policy or precedential value that requires clarification. Nguyen has failed to satisfy his burden that he has a clear legal right to the requested relief and has not demonstrated an urgent need for it. The District Court did not engage in an arbitrary or capricious exercise of discretion, did not manifestly abuse its discretion, did not fail to perform any dutiful act that the law requires and did not act in excess of its jurisdiction so as to entitle Nguyen to a writ of mandamus. Accordingly, this Court should deny Nguyen's Petition for extraordinary relief.

Dated this15th day of November, 2021.

HAYES | WAKAYAMA

By*/s/ Dale A. Hayes, Jr., Esq.*

DALE A. HAYES, JR., ESQ.
Nevada Bar No. 9056
LIANE K. WAKAYAMA, ESQ.
Nevada Bar No. 11313
JEREMY D. HOLMES, ESQ.
Nevada Bar No. 14379
5798 S Durango Drive, Suite 105
Las Vegas, Nevada 89113
Attorneys for Real Parties in Interest

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this answer, 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 answer complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 15th day of November, 2021.

HAYES | WAKAYAMA

By */s/ Dale A. Hayes, Jr., Esq.*

DALE A. HAYES, JR., ESQ.
Nevada Bar No. 9056
LIANE K. WAKAYAMA, ESQ.
Nevada Bar No. 11313
JEREMY D. HOLMES, ESQ.
Nevada Bar No. 14379
5798 S Durango Drive, Suite 105
Las Vegas, Nevada 89113
Attorneys for Real Parties in Interest

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **ANSWER TO PETITION FOR WRIT OF MANDAMUS** was filed electronically with the Nevada Supreme Court on the 15th day of November, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List and I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

S. BRENT VOGEL
Nevada Bar No. 006858
ERIN E. JORDAN
Nevada Bar No. 010018
Lewis Brisbois Bisgaard & Smith LLP
6385 S.Rainbow Boulevard, Ste 600
Las Vegas, Nevada 89118
Telephone: 702-893-3383
Attorneys for Petitioner

The Honorable Monica Trujillo
The Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Respondent

Aaron Ford
Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, Nevada 89701
Counsel for Respondent

Carol P. Michel, Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER,
HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Attorneys for Real Party in Interest
Emil
Morneault, RPH

/s/ Javie-Anne Bauer
An employee of Hayes Wakayama