

IN THE SUPREME COURT OF THE STATE OF NEVADA

**PRO PETROLEUM, LLC; RIP
GRIFFIN TRUCK SERVICE CENTER,
INC.; DAVID YAZZIE, JR.,**

Petitioners,

v.

**EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, THE HONORABLE SUSAN
H. JOHNSON, DISTRICT JUDGE,**

Respondent,

and

DAKOTA JAMES LARSEN,

Real Party in Interest.

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Supreme Court Case No.: 83536

District Court Case No.: A-20-826907-C

**PETITIONERS' OPPOSITION TO REAL PARTY IN INTEREST'S MOTION
TO DISMISS PETITION AS MOOT**

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I. INTRODUCTION

On August 13, 2021, counsel for Petitioners and Real Party in Interest, Dakota Larsen (“Plaintiff”) in the above-captioned matter appeared telephonically before the Honorable Discovery Commissioner Jay Young on Defendants’ Motion to Compel Physical Examination of Plaintiff Pursuant to NRCP 35 and Execution of Employment Releases on an Order Shortening Time. The Discovery Commissioner recommended that Plaintiff be compelled to submit to a physical exam pursuant to Rule 35, but that Plaintiff may record the exam and have an observer present at the exam pursuant to NRS 52.380. Petitioners objected to the recommendation in so far as it allowed Plaintiff to record his Rule 35 exam and have an observer present at the exam. Petitioners requested that the District Court reject and reverse the Discovery Commissioner’s recommendation allowing Plaintiff to record his Rule 35 exam and have an observer present at the exam who is an attorney, attorney representative, or a hired expert. Petitioners also requested that the District Court stay the case pursuant to NRCP 37(b)(1)(D) to allow the Rule 35 exam to be conducted prior to the surgery then scheduled for September 13, 2021.

On September 9, 2021, the District Court issued an Order affirming and adopting the Discovery Commissioner's Report and Recommendations. The Court also denied Petitioners' Motion to Stay the Case pursuant to NRCP 37(b)(1)(D). Petitioners then petitioned this Court for a Writ of Mandamus and/or Prohibition seeking review of the District Court's September 9, 2021 Order.

On October 20, 2021, Petitioners filed a Motion to Stay the Case on an Order Shortening Time in District Court, which was denied. On November 3, 2021, Petitioners then filed a Motion to Stay the Case on an Oder Shortening Time in this Court, which was also denied. Each motion sought to stay the case so that Petitioners would not be forced to proceed with Plaintiff's Rule 35 examination pursuant to NRS 52.380, which is unconstitutional.

As the case was not stayed by either the District Court or this Court, and Real Party in Interest made clear his intention to proceed with lumbar surgery posthaste, thereby destroying evidence, Petitioners noticed Real Party in Interest's Rule 35 exam in accordance with the District Court's Order adopting the Discovery Commissioner's Report and Recommendations. At no point did Petitioners *consent* to Real

Party in Interest's Rule 35 exam pursuant to NRS 52.380. Rather, Petitioners complied with court orders.

II. ARGUMENT

Advisory relief is an appropriate form of mandamus relief where the petitioner asks the court to clarify a legal issue of statewide importance, and such an answer will promote judicial economy. *Walker v. Second Jud. Dist. Ct.*, 136 Nev. Adv. Op. 80, 476 P.3d 1194, 1198-99 (2020). Here, although Real Party in Interest's Rule 35 examination went forward as ordered by the District Court, there remains the question of whether the examination should have gone forward pursuant to NRS 52.380 or NRCP 35. Petitioners have continuously maintained their position that the examination should have been pursuant to NRCP 35, not NRS 52.380, and made every attempt to stay the case and thereby prevent the examination from going forward unconstitutionally and prevent its petition for mandamus from becoming moot.

III. CONCLUSION

Petitioners, for the forgoing reasons, respectfully request that this Court deny Real Party in Interest's Motion to Dismiss Petition as Moot.

DATED: January 3, 2022

GRANT & ASSOCIATES

By: /s/ Sonya C. Watson
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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2022, a true and correct copy of the foregoing **PETITIONERS' OPPOSITION TO REAL PARTY IN INTEREST'S MOTION TO DISMISS PETITION AS MOOT** was submitted for filing via the Court's eFlex electronic filing system, and electronic notification will be sent to the following:

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With copy delivered via e-mail to:

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/s/ Denisse A. Girard-Rubio

An Employee of Grant & Associates