IN THE SUPREME COURT OF THE STATE OF NEVADA

Margaret Reddy, Mohan Thalamarla, Max Global, INC. Appellants, vs. MEDAPPEAL, LLC, an Illinois limited liability company Respondent.	Supreme Court No. 83763

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APPELLANTS' REPLY BRIEF

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Docket 83763 Document 2022-25117

IN THE SUPREME COURT OF THE STATE OF NEVADA

Margaret Reddy, Mohan Thalamarla, Max Global, INC. Appellants, vs. MEDAPPEAL, LLC, an Illinois limited liability company Respondent.	Supreme Court No. 83253

APPELLANTS' 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 in order that the judges of this court may evaluate possible disqualification or recusal.

Appellants MARGARET REDDY and MOHAN THALAMARLA are individuals and have no parent corporations. MAX GLOBAL LLC is a limited liability company with no parent corporations.

The following law firms (with the listed attorneys) have appeared previously in this case:

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The following law firm is expected to appear in this court for Appellants:

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STANDARD OF REVIEW

The standard of review of Motions for Summary Judgment, pursuant to NRCP 56, from *Wood v. Safeway, Inc.* is that

> "This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court.[1] Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law."[*Id.* at Footnote 2] This court has noted that when reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." [Id. At Footnote 3]. (*Wood v. Safeway, Inc.*, 121 Nev. 724, (2005)).

This court reviews de novo a district court's determination of personal jurisdiction. *Fulbright & Jaworski LLP v. Eighth Judicial District Court*, 342 P.3d 997 (Nev. 2015).

Similarly, this Court reviews questions of law under the de novo standard of review *Frantz v. Johnson*, 116 Nev. 455, 471, 999 P.2d 351, 361 (2000) (citations omitted).

Appellants address the findings of fact made from documentary evidence otherwise precluded from admission for legal reasons such as privilege and evidentiary inadmissibility during ruling on motions for summary judgment and as such, as it is involving a purely legal question, these rulings are reviewed de novo. *Settelmeyer & Sons v. Smith & Harmer*, 124 Nev. 1206, 1215 (2008).

I. PROCEDURAL BACKGROUND

Since the filing of Appellants' Opening Brief, the following has occurred in this case:

Respondent, in its Answering Brief, raised the issues of law of the case and again raised the issue of the ability for an LLC to sue non-forum state residents as a Foreign LLC not licensed to ever to do business in the forum state.

Additionally, this Court granted an Order of Affirmance in the first appeal, appeal number 83253 on June 17, 2022. In that decision, the court stated that, among other things:

a) Privity was not addressed well enough to the Court

b) Reasons for why a Foreign LLC should not commence a case against foreign defendants was not properly articulated, as it was not articulated why commencing a lawsuit is not the same as maintaining a lawsuit.

As this Appeal requests review not of the Motion for Summary Judgment, but rather, of the subsequently filed Huneycutt motion that challenged the decision of the District Court to allow a Foreign LLC not doing business (or at least characterize itself as not doing business) to sue Foreign LLCs, this appeal explained why that is inappropriate. Appellants believe they explained how "commencing" is different from "maintaining" pursuant to

the statutes of the State of Nevada, the legislative history that explains the purpose of the statue and other state's statutes that are similar in both wording and function.

Further, this Reply incorporates arguments in this appeal that were first raised in the Petition for Rehearing in the first appeal and addresses the "law of the case doctrine". The Answering brief for the Petition for Rehearing has been ordered. It is due to be filed by Respondents no later than August 17, 2022, 7 days after this brief is due.

Appellants long ago attempted to consolidate these appeals but that motion was denied by this Court. Appellants continued this appeal of the Huneycutt Motion and the awarding of attorney's fees occurring after Appellants' motion to consolidate was denied.

II. ARGUMENT

A. THE LAW OF THE CASE DOCTRINE SHOULD NOT APPLY TO THIS APPEAL

The following is a short synopsis of the law of the case as it exists in Nevada:

1) The Supreme Court of Nevada treats its law of the case as if it were another variation of res judicata under principles of estoppel as opposed to stare decisis under principles of correct application of rules. (*Cartan v. David*, 4 P. 61 (1884))

2) The Supreme Court of Nevada adopted the no power theory of law of the case, meaning, once the court rules, it cannot depart from that prior rule except upon a motion for rehearing. (*State v. Loveless*, 150 P.2d 1015 (1944))

3) The scope of law of the case in Nevada is limited to only appellate decisions. District Court decisions on a case do not trigger "law of the case" preclusion. (*McKague v. Whitley*, 912 P.2d 255 (Nev. 1996))

4) Law of the case applies to any issue on appeal properly raised, deliberated, and decided. (*Loveless*, at 1015)

5) Law of the case cannot be avoided because a better argument was made subsequently made after reflection upon the previous proceedings. (Hall v. State, 535 P.2d 797 (1975))

6) Law of the case applies to all issues where the facts are substantially the same. (*Walker v. State*, 455 P.2d 34 (Nev. 1969))

Law of the Case in this case did not arguably apply until after this Court rendered its Order on June 17, 2022. On June 21, 2022, this opening brief was filed 4 days later.

However, in the Federal Court's and other jurisdictions have different exceptions to this doctrine, see *Sowder v. United States*, 251 Fed. Appx. 444 (9th Cir.

Wash. 2007). For example, the 9th Circuit determined those exemptions are:

a) if the decision is clearly erroneous and enforcement would cause manifest injustice;

b) if intervening controlling authority makes reconsideration appropriate; or

c) if substantially different evidence was adduced at a later trial. (*Id.*)

Thus, departure from the law of the case doctrine is allowed by the courts only in exceptional circumstances such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed. *Commonwealth v. Starr*, 541 Pa. 564 (Pa. 1995).

The law of the case doctrine prevents the parties from seeking appellate reconsideration of an already decided issue in the same case if there is no significant change in circumstances. *People v. Boyer*, 38 Cal. 4th 412 (Cal. 2006)

The California Supreme Court held that the doctrine is one of procedure, not jurisdiction, and it will not be applied where its application will result in an unjust decision, that is, where there has been a manifest

misapplication of existing principles resulting in substantial injustice.

Under the law of the case doctrine, a court should not reopen issues decided in earlier stages of the same litigation. *Agostini v. Felton*, 521 U.S. 203 (U.S. 1997). However, the doctrine does not apply if the court is convinced that its prior decision is clearly erroneous and would work a manifest injustice.

Appellants in this appeal, filed their opening brief on the date it was due on June 21, 2022. Further, Appellants, in their first appeal, have made one additional brief, pursuant to Loveless, and that Petition for Rehearing has triggered an Answering brief that is due to be briefed on August 17, 2022. This Reply refers to that Petition and incorporates it within this Reply as if the points and authorities were reiterated verbatim herein.

Appellants argue the "law of the case" does not apply in this instance for the following reasons:

a) the appeals were taken of two different orders

b) the appeals were attempted to be consolidated, but the attempt was denied

c) the second appeal addressed argument Appellants believe this Court did not receive in the first appeal, primarily because the first appeal was taken before the

District Court Order was decided that formed the basis for the second appeal

d) the issues briefed in this appeal are significantly different from the issues briefed in the first appeal.

e) Appellants believe that the Supreme Court committed error in the decision of the Order of Affirmance regarding both the privity issue and the LLC standing issue.

As Appellants believe that both privity and standing are both jurisdictional issues (privity being jurisdictional as well as Constitutional), Appellants believe that it is always allowable to argue the existence or the lack of existence of subject matter jurisdiction.

Further, Appellants believe that a Foreign LLC, which is not licensed to do business in Nevada, cannot sue a foreign resident in Nevada under any theory. Appellants believe that so allowing a company to form elsewhere, not do business in Nevada or to be formed in another state solely for the purpose of suing a NON-NEVADA domiciled / resident individual in NEVADA is manifestly unjust. This second appeal precisely argues this injustice.

Additionally, since Appellants also believe that this is a case of first impression in Nevada, Appellants believed that the Court needed to review the issue in this appeal, which was taken of the Huneycutt motion, rather in the first appeal, wherein that issue was not raised in the

District Court before the First Appeal was taken in July of 2021.

CONCLUSION

For all of the reasons set forth, Appellants request this Court consider this second appeal.

Dated this 10th day of August, 2022

THE WASIELEWSKI LAW FIRM, LTD.

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ATTORNEY'S CERTIFICATE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a monospaced typeface using MICROSOFT WORD with Courier New typeface, 12 point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it:

[X] Does not exceed 15 pages.

3. Finally, I hereby certify that I have read this appellate brief, 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 brief 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 10th day of August, 2022

Respectfully submitted,

/s/ Andrew Wasielewski

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document and the Appendix was filed electronically with the Nevada Supreme Court on August 10, 2022. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Michael H Singer
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