IN THE SUPREME COURT OF THE

STATE OF NEVADA

E&T VENTURES, LLC, a Nevada limited liability company,

Petitioner,

vs

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

Respondent,

EUPHORIA WELLNESS, LLC, a Nevada limited liability company,

Real Party in Interest.

Supreme Court Case No. 84336

District Court Case: A-19-796919-B

REPLY IN SUPPORT OF MOTION TO STAY DISTRICT COURT CASE PENDING DECISION ON PETITION [ACTION REQUIRED ON OR BEFORE JUNE 30, 2022 AT 10:15 A.M.][1]

LAW OFFICE OF MITCHELL STIPP

MITCHELL STIPP, ESQ. (Nevada Bar No. 7531)

1180 N. Town Center Drive, Suite 100 Las Vegas, Nevada 89144

Telephone: 702.602.1242; Email: mstipp@stipplaw.com

Counsel for Petitioner

[1] A jury trial is set for August 1, 2022, and a pretrial conference is scheduled for June 30, 2022 at 10:15 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction

On May 16, 2022, Petitioner, E&T Ventures, LLC ("Petitioner"), filed its motion to stay the district court proceedings. See Dkt. No. 22-15505. On May 23, 2022, Respondent, Euphoria Wellness, LLC ("Respondent"), filed its response to the motion. See Dkt. 22-16293 (the "Response"). The Response claims the Petition is "an elaborate scheme for Petitioner to avoid sanctions rulings." See Response, page 2. Respondent further claims that the petition filed in Case No. 84133 is evidence of this scheme. Id.

The discovery dispute is not before the Nevada Supreme Court. Petitioner disputes that its discovery responses were "wholly insufficient and patently false." Petitioner appeared before the district court to address Respondent's discovery issues. In fact, the district court held an evidentiary hearing on Respondent's request for sanctions on February 11, 2022. See Exhibit 1 to Petitioner's Motion to Stay, Dkt. No. 22-15505. Further, ***at the request of Respondent***, the district court scheduled further time to complete the evidentiary hearing on March 24, 2022. Despite Respondent requesting more time to present evidence, Petitioner and Respondent rested on the evidence presented at the hearing on February 11, 2022. Respondent's claim that Petitioner's motivation is to "avoid sanctions rulings" is not consistent with the facts or record. ***The district court continues to hear and decide matters***. However, the district court never issued a ruling on Respondent's request for case ending sanctions.

B. Petitioner is entitled to a Stay.

Respondent does not address the factors set forth in NRAP 8(c). Respondent claims the object of the Petition will not be defeated if the stay is denied because the Petition lacks merit. Trial in the district court is scheduled for a jury trial on August 1, 2022. The purpose of the Petition is to protect Petitioner's constitutional right to—and the public's interest in—an impartial tribunal. Respondent does not address Petitioner's arguments on the first factor under NRAP 8(c). Instead, Respondent claims the Petition lacks merit (which Petitioner believes is more appropriate to consider as part of the last factor under NRAP 8(c)).

1. Chief Judge Bell's decision was premature.

Respondent claims the Petition is meritless because Chief Judge Bell properly decided the motion to disqualify. Respondent seems to believe that Chief Judge Bell's decision was timely because the parties "had not agreed upon a judge[.]" However, Respondent ignores the plain language of NRS 1.235(6)(a), which provides as follows:

> 6. A judge may challenge an affidavit alleging bias or prejudice by filing a written answer with the clerk of the court within 5 judicial days after the affidavit is filed, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of the judge's disqualification. ***The question of the judge's disqualification must thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed***:
>
> (a) If the judge is a district judge, by the presiding judge of the judicial district in judicial districts having more than one judge, or if the

> presiding judge of the judicial district is sought to be disqualified, by the judge having the greatest number of years of service;

(emphasis added). Under the plain meaning of the statute, Chief Judge Bell only had jurisdiction to decide the matter ***if the parties were unable to agree***. Chief Judge Bell did not impose a deadline. She also did not communicate with the parties on the status of negotiations. However, Respondent set a deadline of 9:00 a.m. on February 10, 2022 to reach an agreement on the judge to decide the matter of disqualification before filing a notice that the parties were "unable to agree." See **Exhibit 1** to the Motion attached as **Exhibit 4** to Volume II of the Appendix filed by Petitioner (Dkt. 22-07121) (Appendix 264-286, 276-279). Chief Judge Bell issued her decision at 7:52 a.m. on February 10, 2022. See **Exhibit 3** to Volume II of the Appendix filed by Petitioner (Dkt. 22-07121) (Appendix 256-263). The phrase "if the parties were unable to agree" does not mean that in the absence of actual notice of an agreement that Chief Judge Bell has jurisdiction to decide the matter at any time.

2. The Motion includes an Affidavit under NRS 1.235.[2]

Respondent claims the motion did not constitute a new affidavit pursuant to NRS 1.235(1). Petitioner included a new affidavit/declaration/certification pursuant to NRS

[2] The motion is attached as **Exhibit 4** to Volume II of the Appendix filed by Petitioner (Dkt. 22-07121) (Appendix 264-286).

1.235 as part of its motion which was signed by E&T's counsel who also prepared, signed and filed the motion (and the original affidavit). See **Exhibit 4** to Volume II of the Appendix filed by Petitioner (Dkt. 22-07121) (Appendix 275). Paragraph 4 of the affidavit/declaration/certification pursuant to NRS 1.235 expressly provides as follows:

> 4. The facts set forth in the above motion are true and accurate. Such facts support withdrawal/reconsideration of the decision by Chief Judge Bell, an evidentiary hearing concerning the disqualification of Judge Kishner, and/or a stay of the case pending resolution of the issue of disqualification. I have personal knowledge of the facts contained in this filing unless otherwise qualified by information and belief or such knowledge is based on the record in this case, and I am competent to testify thereto, and such facts are true and accurate to the best of my knowledge and belief.

The motion includes ***new basis*** for disqualification based on the district court's response to the original affidavit. See **Exhibit 4** to Volume II of the Appendix filed by Petitioner (Dkt. 22-07121) (Paragraphs 4-6, Appendix 270-272) (misrepresentation of the record to justify her abuse of judicial power and to avoid disqualification). Respondent contends that the affidavit/declaration/certification pursuant to NRS 1.235 is "merely a declaration in support of the Motion." However, Respondent conveniently ignores the relief requested by the motion—reconsideration based in part on Judge's Kishner's response to the original affidavit under NRS 1.235.

3. Neither Petitioner not Respondent will suffer serious or irreparable injury.

Respondent fails to address Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 253

(Nev. 2004), which makes it clear that harm will not generally play a significant role in the decision whether to issue a stay because generally the only cognizant harm threatened to the parties is increased litigation costs and delay. Without any evidence or authority, Respondent claims a stay would allow Petitioner to engage in litigation abuses and delays and that Respondent will be required to spend more money on attorney's fees and costs if a stay is granted. To be clear, there is no evidence of any discovery misconduct by Petitioner or its counsel. Respondent simply relies on the observations of Respondent's counsel, Marta Kurshumova, on "attempts to obfuscate discovery" as set forth in Paragraph 18 of her declaration, which is not based on facts or any record.

4. The Motion is Procedurally Proper.

Respondent claims the motion for a stay is not proper because the declaration of Joseph Kennedy attached to the motion does not identify the facts on which he has personal knowledge. Respondent cites to NRAP 8(b)(ii) which does not exist. NRAP 8(a)(2)(B)(ii) requires originals or copies of affidavits or other sworn statements supporting facts subject to dispute. What are the facts subject to dispute? Respondent does not explain. NRAP 8(a)(2)(B)(ii) does not require that Mr. Kennedy separately to identify facts with any specificity in his declaration if they are set forth in the motion and confirmed generally by his declaration.

For the reasons set forth in Petitioner's motion for a stay and this reply, a stay should be granted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of May, 2022, I filed the foregoing **REPLY,** using the court's electronic filing system.

Notice of the filing of the Reply 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 and by mail to the addresses as indicated:

Judge Joanna Kishner:

Dept31lc@clarkcountycourts.us

Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

///

///

///

///

Euphoria Wellness, LLC:

Nicole E. Lovelock, Esq.
Nevada State Bar No. 11187
JONES LOVELOCK
6600 Amelia Earhart Ct., Suite C
Las Vegas, Nevada 89119
Telephone: (702) 805-8450
Fax: (702) 805-8451
Email: nlovelock@joneslovelock.com

By: _____

An employee of Law Office of Mitchell Stipp