

**IN THE SUPREME COURT OF THE**

**STATE OF NEVADA**

CLARK NMSD, LLC,  
Appellant,

vs

JENNIFER GOLDSTEIN,  
Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No. 84623

District Court Case No. A-15-728510-B

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**APPELLANT'S EMERGENCY MOTION FOR STAY OR INJUNCTION  
[ACTION REQUESTED BEFORE 5PM ON DECEMBER 9, 2022]**

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DATED this 5th day of December, 2022.

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/s/ Mitchell Stipp

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## **I. INTRODUCTION**

This appeal concerns the post-judgment collection activity of Jennifer Goldstein (“Respondent”) in District Court Case No. A-15-728510-B. Appellant, Clark NMSD, LLC, a Nevada limited liability company d/b/a The Sanctuary (“Appellant”), ***intervened*** in the district court case pursuant to which NuVeda, LLC (“NuVeda”) is a judgment debtor and Respondent is a judgment creditor. Appellant is not subject to Respondent’s judgment. See Case No. 79806 (Dkt. No. 19-42584).

The Appellant filed an application/petition in accordance with NRS 31.070 in the district court, which application/petition was opposed by Respondent and denied by the district court. The sole and exclusive remedy for third parties whose property is wrongfully seized is set forth in NRS 31.070. See Cooper v. Liebert, 81 Nev. 341, 344, 402 P.2d 989, 991 (1965) (confirming NRS 31.070 as exclusive remedy). Appellant timely filed its notice of appeal on April 21, 2022. See NRAP 4(a); see also Dkt. No. 22-13277. Respondent filed her ***second motion*** to dismiss this appeal, which was denied by the Nevada Supreme Court. See Dkt. No. 22-36847 (dismissing Respondent’s motion to dismiss appeal and confirming Appellant’s standing under NRS 31.070 and right to appeal).

## **II. STATEMENT OF FACTS.**

Judge Elizabeth Gonzalez of Department 11 of the Eighth Judicial District Court, State of Nevada, presided over district court case A-15-728510-B. After the retirement of Judge Gonzalez, the case was reassigned to Department 31, Judge Joanna Kishner. Respondent caused the Constable's Office to serve writs of execution for cash at the marijuana dispensaries operated by Appellant (which owns

the dispensary licenses under Nevada law). Dkt. No. 22-36637 (APP 000005-000027, 0000007 (Vol. 1)). The Constable's Office seized cash from one of the dispensaries, which cash belongs to Appellant. Id. at 000007-000008 (referencing Exhibit A to Exhibit 2, APP 000016-000023). Appellant made a written claim for the cash in accordance with NRS 31.070. Id. 000016-000023 (Vol. 1). Appellant filed an application/petition for the return of the cash after the Constable's Office refused to release the same to Appellant. APP 000005-000027 (Vol. 1). Respondent opposed the application/petition. APP 000028-000038 (Vol. 1). Appellant filed a reply. APP 000039-000059 (Vol. 1).

The district court denied Appellant's application/petition because the court determined that Appellant failed to comply with the requirements under NRS 31.070 and failed to establish that it had any relationship with or interest in the judgment debtor (NuVeda) or the cash seized. Id. APP 000060-000061 (Vol. 1) (Minutes); APP 000084-000093 (Vol. 1) (Order). The district court's decision was a clear abuse of discretion. See Dkt. No. 22-36636. Appellant requested as part of its relief before the district court was for an order prohibiting Respondent from pursuing her illegal collection activity. Dkt. No. 22-36637 (APP 000005-000027 (Vol. 1)). If the district court denied the relief requested by Appellant, Appellant requested a stay to pursue the matter before the Nevada Supreme Court. Id. APP 000039-000059, 000045 (Vol. 1).

NuVeda filed a chapter 11 bankruptcy petition (Nevada Bankruptcy Court, Case No. BK-22-11249-ab1) after Respondent moved Department 31 to appoint a

receiver over NuVeda **and its subsidiaries/affiliates** (including Appellant).<sup>1</sup> The dispute over NuVeda’s assets was resolved by the bankruptcy court. Respondent moved the bankruptcy court to dismiss NuVeda’s bankruptcy. The Cannabis Compliance Board (“CCB”) initially filed a joinder to Respondent’s motion. However, the CCB withdrew its opposition and agreed that NuVeda did not own Appellant (or any of the purported subsidiaries that were licensed cannabis establishments) (“CCB Stipulation”). See **Exhibit 1** to Appellant’s Appendix in Support of Motion (“Motion Appendix”). The bankruptcy court dismissed NuVeda’s chapter 11 petition on October 14, 2022. See **Exhibits 2 and 3** to Appellant’s Exhibits filed in support of this Motion (Exhibit 2, Transcript; Exhibit 3, Order). **As part of the basis for dismissing the bankruptcy, the bankruptcy court determined NuVeda had no income or assets to fund a feasible plan.** See **Exhibit 2** to Motion Appendix, Transcript at 46:9-18.

Despite NuVeda’s lack of assets and income to fund a feasible bankruptcy plan (i.e., to pay Respondent’s judgment), Respondent has asked the district court again to appoint a receiver. See **Exhibit 4** to Motion Appendix; see also **Exhibit 5** to Motion Appendix, Receivership Motion at 15:7-12. The Clerk of the Court did not schedule a hearing. Instead, the district court issued a memorandum, which

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<sup>1</sup> The receiver for CW Nevada, LLC (“Receiver” and “CW Nevada,” respectively) attempted to expand the scope of the initial receivership order applicable to CW Nevada by including CWNV, LLC as part of the estate in District Court Case No. A-18-773230-B. See Case No. 79110. The difference between this entity and Appellant is Appellant owns cannabis licenses and operates dispensaries. Accordingly, the harm to Appellant is real. Respondent’s attorney, Brian Irvine, also represents TRC-Evolution which entered into a settlement with the Receiver to get preferred payments on receivership certificates in exchange for withdrawing any objection to payment of the Receiver’s fees and costs. The bad acts are the subject of a writ petition and stay. See Case No. 85254.

continued what was assumed to be a status check and converted that hearing to a hearing on the appointment of a receiver. See Exhibit 6 to Motion Appendix.

Respondent is a third-party beneficiary of an indemnification agreement which requires CWNevada to consent to any settlement or payment and for CWNevada to pay the same (“Indemnification Agreement”). See Dkt. No. 22-36637 (APP 000012-000015 (Vol. 1)) (Exhibit 1 to Motion). NuVeda and Appellant sought relief before Department 13 concerning enforcement of the Indemnification Agreement and enjoining Respondent’s illegal collection activities. See Exhibits 7 through 9 to Motion Appendix. Unfortunately, despite having jurisdiction, Department 13 denied the motion (deferring to Department 31 on the request for an injunction). See Exhibit 10 to Motion Appendix.

### **III. ARGUMENT.**

Appellant requested as part of its relief before Department 31 for an order prohibiting Respondent from pursuing her illegal collection activity. Dkt. No. 22-36637 (APP 000005-000027 (Vol. 1)). Appellant also requested a stay to pursue the matter before the Nevada Supreme Court. Id. APP 000039-000059, 000045 (Vol. 1).

The determination of the bankruptcy court on the assets and income of NuVeda is binding on Respondent in this case. For “issue preclusion to attach, the issue decided in the prior [proceeding] must be identical to the issue presented in the current [proceeding],” *id.* (alterations in original) (quotation omitted), and have been “actually litigated and determined by a valid and final judgment [in which] the determination [was] essential to the judgment.” In re Sandoval, 126 Nev. —, —

—, 232 P.3d 422, 424 (2010) (quoting Restatement (Second) of Judgments § 27 (1982)). All factors are present here.

The appointment of a receiver over NuVeda’s former subsidiaries/affilites (including Appellant) will cause irreparable harm. Appellant is aware that such a decision is subject to the right of appeal under NRAP 3A(b)(4). However, Appellant operates two (2) cannabis dispensaries, which will in the interim be impacted by any such order by Department 31. The appointment of a receiver is a harsh and extreme remedy which should be used sparingly and only when the securing of ultimate justice requires it. Hines v. Plante, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983). It would be a clear abuse of discretion to appoint a receiver over former subsidiaries/affiliates of NuVeda (including Appellant) when Respondent does not have a judgment against any person or entity other than against NuVeda. Further, NuVeda does not own cannabis licenses or interests in cannabis businesses. In Hines, the Nevada Supreme Court noted the following:

[A]ppointing a receiver to supervise the affairs of a business is potentially costly, as the receiver typically must be paid for his or her services. A receivership also significantly impinges on the right of individuals or corporations to conduct their business affairs as they see fit, and may endanger the viability of a business. The existence of a receivership can also impose a substantial administrative burden on the court.

99 Nev. at 261.

NRAP 8 permits a stay or injunction pending appeal. Here, Appellant requests a stay of the district court proceedings below or an injunction under NRAP

8(a)(1)(C) prohibiting Respondent from pursuing collection activities against Appellant (including requesting the appointment of a receiver over Appellant and other former subsidiaries/affiliates of NuVeda). A preliminary injunction is available when the moving party can demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate and that the moving party has a reasonable likelihood of success on the merits. See NRS 33.010; University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); Dangberg Holdings v. Douglas Co., 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). Appellant is likely to be successful on the merits of its appeal. See Dkt. No. 22-36636. Without a stay or injunction, Appellant and former subsidiaries and affiliates of NuVeda will be harmed (as briefed above). Respondent will suffer no injury or harm as a result of a stay or injunction. As confirmed by the bankruptcy court, NuVeda does not have assets or income to pay Respondent's judgment. While those circumstances are unfortunate, Respondent still has rights and remedies in the Receivership Action pursuant to the Indemnification Agreement.

The Nevada Supreme Court has recognized the right of an Appellant to request that the district court case be reassigned upon remand. Valley Health Sys., LLC v. Eighth Judicial Dist. Court of Nev., 510 P.3d 777 (Nev. 2022). Appellant has not yet sought recusal or disqualification of Judge Kushner (Department 31) in the district court below. However, Appellant has requested reassignment as part of the relief requested on appeal. See Dkt. No. 22-36636 (Article VII, Section D, p. 15-17). Appellant believes Judge Kushner's decisions in the district court case below cannot be explained other than by deep-seated antagonism toward Joseph



Kennedy (which is a managing member of NuVeda and a manager of Appellant) that would make fair judgment by her impossible (including at the hearing on December 13, 2022). See e.g. Case No. 84336 (disqualification of Judge Kushner). Appellant complied with NRS 31.070. However, Judge Kushner determined despite clear evidence to the contrary that Appellant failed to do so and did not establish that it had any relationship with or interest in NuVeda or the property at issue. Id. (Article VII, Section C., p. 13-15). Obviously, Appellant did not need to establish any relationship with NuVeda as part of NRS 31.070.

Judge Kushner created procedural rules to block Appellant's attempt at substantive relief. For example, she denied Appellant's motion for reconsideration as "premature" because there was no notice of entry on file. See Dkt. No. 22-36636, APP 000062-000077 (Vol. 1) (motion), APP 000078-000083 (Vol. 1) (order to show cause), and APP 000084-000093 (Vol. 1) (order); Dkt. No. 22-36638, APP 000115-000116 (Vol. 2) (minutes); Dkt. No. 22-36639, APP 000220-000225 (Vol. 3) (order). Appellant provided notice of entry (when Respondent failed to do so) and refiled its motion. Dkt. No. 22-36638, APP 000117-000128 (Vol. 2); APP 000129-000148 (Vol. 2). This time, Judge Kushner refused to consider the motion. According to the district court, there was no mechanism under the Nevada Rules of Civil Procedure or the Eighth Judicial District Court of the State of Nevada for filing a "renewed" motion for reconsideration. See Dkt. No. 22-36640 (APP 000259-000271 (Vol. 4)). Alternatively, the district court denied the motion because, "as a matter of due process," Respondent was impermissibly precluded from addressing the impact of the appeal. Id. No regard was provided to procedural and substantive due process rights of NuVeda or Appellant.

#### **IV. CONCLUSION.**

For the reasons set forth above, Appellant respectfully requests that the Nevada Supreme Court stay the proceedings in Case No. A-15-728510-B or enjoin Respondent from pursuing any collection activities against any person or entity other than NuVeda (including requesting a receivership over NuVeda's former subsidiaries/affiliates).

## DECLARATION OF MITCHELL STIPP

The undersigned, Mitchell Stipp, Attorney for Appellant, declares under penalty of perjury as follows:

1. The facts set forth in the motion are true and accurate to the best of my knowledge and belief.
2. The Exhibits included as part of Appellant's Motion Appendix are true and accurate.
3. I have personal knowledge of the facts contained in the motion unless otherwise qualified by information and belief or such knowledge is based on the record in this case, I am competent to testify thereto, and such facts are true and accurate to the best of my knowledge and belief.

DATED this 5th day of December, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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## NRAP 27(E) CERTIFICATE

1. The telephone number and office address of the attorneys for Respondent are as follows:

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2. Department 31 e-served a memorandum that it intends to consider Respondent's request for a receiver over NuVeda and its subsidiaries/affiliates on December 13, 2022 at 9:00 a.m.

4. A copy of this motion and appendix of exhibits were provided to Respondent's attorneys on December 5, 2022 via email before filing it.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of December, 2022, I filed the foregoing **Emergency Motion and Appendix (Volumes 1-4)**, using the court's electronic filing system.

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By: /s/ Mitchell Stipp

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An employee of Law Office of Mitchell Stipp