

IN THE SUPREME COURT OF THE

STATE OF NEVADA

CLARK NMSD, LLC,
Appellant,

VS

JENNIFER GOLDSTEIN,
Respondent,

NUVEDA, LLC, Interested Party.

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Supreme Court Case No. 84623

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

STATUS REPORT

[ACTION REQUIRED ON OR BEFORE JANUARY 6, 2023 AT 5PM]¹

¹ The district court has scheduled the hearing on the appointment of a receiver over Interested Party, NuVeda, LLC (“NuVeda”) and its subsidiaries and affiliates (including Appellant, Clark NMSD, LLC “Appellant”)) for **January 12, 2023 at 8:30 a.m.** Any brief by NuVeda is due on or before 5pm on December 26, 2022. The district court has prohibited parties other than Respondent, Jennifer Goldstein, and the Cannabis Compliance Board (“CCB”), which appeared in the district court case on December 11, 2022, from filing any briefs. **Respondent has not filed an opposition or other response to the emergency motion (Dkt. No. 22-38631) as required by NRAP 27(a)(3)(A).**

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DATED this 16th day of December, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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MEMORANDUM

This appeal concerns the post-judgment collection activity of Respondent in District Court Case No. A-15-728510-B. Appellant intervened in the district court case pursuant to which 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); see also Judgment and Order attached hereto as **Exhibit 13** ("Goldstein Judgment").² The principal amount of the Goldstein Judgment against NuVeda is **\$2,565,276.41**.

The Appellant (and NuVeda) filed an application/petition in accordance with NRS 31.070 in the district court. See Dkt. No. 22-36637, Application/Petition, Volume 1 to Appendix, APP 000005-000027. The district court denied the application/petition. See id. at APP 000060-000061; 000084-000093; see also Dkt. No. 22-13277. That denial is the specific subject of this appeal.

As punishment for filing the application/petition for the return of Appellant's money and seeking reconsideration of the same before the district court, Respondent filed a motion to appoint a receiver "over NuVeda, LLC and its subsidiaries and affiliates." See **Exhibit 14** (Motion, Page 1, lines 25-26). The district court scheduled a hearing on April 12, 2022 to consider Respondent's request. To avoid the appointment of a receiver over any non-parties to the Goldstein Judgment,

² The exhibits filed in support of this Status Report follow sequentially **Exhibits 1-10** included as part of the Appendix in Support of Appellant's Emergency Motion for Stay or Injunction (Dkt. No. 22-38208 through Dkt. No. 22-38211) and **Exhibits 11-12** attached as part of Appellant's Supplement (Dkt. No. 22-38631).

NuVeda filed a Chapter 11 Bankruptcy petition. The primary objective of the bankruptcy was to resolve the Goldstein Judgment in light of the terms and conditions of the indemnification agreement. See **Exhibit 15** (Notice of Suggestion of Bankruptcy) and **Exhibit 16** (Indemnification Agreement).³ In response, the district court “vacated” the matter—“taking no position as to the merits/scope.” See **Exhibit 17** (Minute Order).

The bankruptcy court unfortunately dismissed NuVeda’s petition upon motion by Respondent. As pointed out in the emergency motion filed by Appellant, the bankruptcy court made specific findings of fact in support of its dismissal including that NuVeda had no income or assets to fund a feasible plan. See **Exhibits 1, 2 and 3** included as part of Appendix, Dkt. No. 22-38208 and 22-38209; see also Dkt. No. 22-38207, Emergency Motion, page 5. While the CCB withdrew its joinder to Respondent’s motion to dismiss NuVeda’s bankruptcy and agreed not to challenge NuVeda’s position on the divestment of its cannabis businesses in 2019, the CCB has changed its position before the district court. See **Exhibit 18** (CCB Joinder); but see In re Sandoval, 126 Nev. —, —, 232 P.3d 422, 424 (2010) (quoting Restatement (Second) of Judgments § 27 (1982) (discussing issue preclusion)).

After Appellant filed its emergency motion (Dkt. No. 22-38207 through Dkt. No. 22-38211) on December 5, 2022, the district court issued a minute order

³ The indemnification agreement requires CW Nevada, LLC (“CW Nevada”) to pay the Goldstein Judgment and prohibits NuVeda from settling or paying the same without CW Nevada’s approval. CW Nevada is subject to a receivership in Department 13 (Case: A-17-755479-B).

clarifying that the hearing on December 13, 2022 again would be a status check (as originally scheduled) and the focus would be the impact of this appeal on Respondent's request to set a hearing on the appointment of a receiver. See Dkt. No. 22-38631. At the hearing on December 13, 2022, the district court heard oral argument and decided without any briefing that the request to appoint a receiver would be heard on January 12, 2023 notwithstanding this appeal and NuVeda's concerns about the district court's jurisdiction.⁴ See Exhibit 19 (Minutes) see also Exhibit 20 (Transcript). Further, the district court set an expedited briefing schedule but prohibited any person or entity who did not appear at the status check from filing a brief. Id. It is unclear how or why the district court believes the consideration of a receiver over NuVeda's subsidiaries/affiliates (including Appellant) without providing notice and an opportunity to be heard (especially to subsidiaries/affiliates which are not parties to the district court case or subject to the Goldstein Judgment) comports with due process. Further, the district court's demand that persons observing the hearing identify themselves and the decision to terminate the connection of parties observing the proceedings who failed to do so is troubling. See Exhibit 20 (pages 2-10); see also Sena v. State, 510 P.3d 731 (Nev. 2022) (citing Halverson v. Hardcastle, 123 Nev. 245, 261, 163 P.3d 428, 440 (2007) (discussing inherent authority of court "to administrate its own procedures and to manage its own affairs, meaning that the judiciary may make rules and carry out other incidental powers when reasonable and necessary for the administration of

⁴ "[A] timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court." Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (internal quotation marks omitted). However, even when divested of jurisdiction with respect to issues in a pending appeal, "the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order." Id. at 855, 138 P.3d at 529-30.

justice.”)). Here, it does not appear the district court’s explanation for interrogating observers was based on any desire to protect the dignity and decency of the court’s proceedings. In fact, the decision to delay the hearing to interrogate observers and to terminate the connections of those persons who failed to respond to the court’s inquiries created an atmosphere of intimidation. The decision by the court to prohibit briefing by any other person or entity other than NuVeda, Respondent and the CCB is even more problematic. See Exhibit 20 (page 29, lines 3-10).

Both the United States Constitution and the Nevada Constitution guarantee that a person must receive due process before the government may deprive him of his property. See U.S. Const. amend. XIV, § 1 ("nor shall any State deprive any person of life, liberty, or property, without due process of law"); Nev. Const. art. 1, § 8(5) ("No person shall be deprived of life, liberty, or property, without due process of law."). Further, the Nevada Supreme Court has recognized that procedural due process “requires notice and an opportunity to be heard.” Maiola v. State, 120 Nev. 671, 675, 99 P.3d 227, 229 (2004); see also Browning v. Dixon, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998). NuVeda’s subsidiaries/affiliates who are not parties to the district court case did not receive notice of the motion, status check or the hearing on January 12, 2023. Further, no party other than NuVeda and Respondent were purportedly required to appear at the status check on December 13, 2022. See Dkt. No. 22-38631.

Respondent has not filed an opposition or other response to the emergency motion as required by NRAP 27(a)(3)(A). Therefore, the relief requested by Appellant should be granted as unopposed. To avoid any prejudice to Respondent

from the stay of the district court case in its entirety (which stay would prevent the district court from taking any further action including appointing a receiver over NuVeda), NuVeda will post a cash bond. NuVeda defers to the Nevada Supreme Court on the amount of the bond; however, NuVeda suggests the bond amount be **\$1,000,000.00** but should not exceed **\$2,565,276.41** (which is the principal amount of the Goldstein Judgment).⁵ If the Nevada Supreme Court is unwilling to grant a stay of the district court proceedings below but is willing to enjoin Respondent from pursuing any collection activities against any person or entity other than NuVeda (including requesting a receivership over NuVeda's subsidiaries/affiliates), Appellant will post a bond in an amount not to exceed **\$250,000.00**.

DATED this 16th day of December, 2022.

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⁵ The principals of NuVeda will contribute the money to NuVeda to post the cash bond.

DECLARATION OF MITCHELL STIPP

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

1. The facts set forth in the status report are true and accurate to the best of my knowledge and belief.
2. The Exhibits included as part of the Appendix filed in support of the status report are true and accurate.
3. I have personal knowledge of the facts contained in the status report 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 16th day of December, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of December, 2022, I filed the foregoing **Status Report and Appendix**, using the court's electronic filing system.

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