

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERESA GUBLER AND MARGARET R.
LEAVITT, INDIVIDUALLY AND AS
CO-SPECIAL ADMINISTRATORS OF
THE ESTATE OF MARIA HEATON,
DECEASED,

Appellants,

vs.

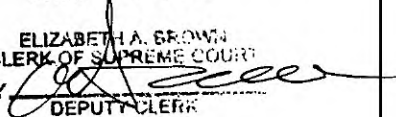
ELLIS, BANDT, BIRKIN, KOLLINS &
WONG, PLLC, A NEVADA DOMESTIC
PROFESSIONAL LIMITED LIABILITY
COMPANY, D/B/A DESERT
RADIOLOGY; SHELIN AGRAWAL &
HYER, PLLC, A NEVADA DOMESTIC
PROFESSIONAL LIMITED LIABILITY
COMPANY, D/B/A DESERT
RADIOLOGY; AND FARHAD SANI,
M.D.,

Respondents.

No. 84926

FILED

AUG 08 2022

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

O R D E R

This appeal was docketed on June 27, 2022. The notice of appeal was filed by counsel on behalf of Maria Heaton and the original caption of this appeal identified Maria Heaton, an individual, as appellant. The case appeal statement and docketing statement were filed on July 19, 2022. Because these documents indicated that Maria Heaton was deceased and Teresa Gubler and Margaret R. Leavitt were proceeding with this appeal on behalf of Maria Heaton's estate, on July 20, 2022, this court sua sponte modified the caption consistent with the caption on this order. Respondents object to the modification of the caption and have filed a joint motion to dismiss this appeal.

Respondents assert that because neither Teresa Gubler nor Margaret R. Leavitt were named as parties of record in the trial court below or made an appearance in the underlying matter¹ neither of them has standing to bring or maintain this appeal.

Contrary to respondents' assertion, Teresa Gubler and Margaret R. Leavitt, as co-special administrators of Maria Heaton's estate, may pursue this appeal on behalf of the estate of Maria Heaton. *See* NRAP 43(a)(1), (3). We agree, however, that because counsel has not filed a motion to substitute Teresa Gubler and Margaret R. Leavitt in their capacity as co-special administrators of the estate of Maria Heaton as appellants in this appeal, the modification of this court's caption was premature. *See id.* Further, unless Teresa Gubler and Margaret R. Leavitt are properly substituted for appellant Maria Heaton, this appeal is subject to dismissal. *See generally Brass v. State*, 129 Nev. 527, 528, 306 P.3d 393, 394 (2013) (holding that "if a party dies pending review of his appeal, the appeal will be dismissed unless the decedent's personal representative is substituted in as a party to the appeal"); *Walker v. Burkham*, 68 Nev. 250, 253-54, 229 P.2d 158, 160 (1951) (upon the death of a party, an action may not proceed until a personal representative is substituted for the decedent). Therefore, we defer ruling on the motion to dismiss.

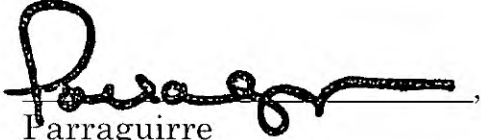
Counsel for appellant shall have 7 days from the date of this order to comply with NRAP 43(a)(1). *See* NRAP 43(a)(3). We caution

¹The district court dismissed the underlying matter following Maria Heaton's death as no proper party was substituted pursuant to NRCP 25(a)(1).

appellant's counsel that failure to comply will result in the dismissal of this appeal.

Settlement proceedings are suspended pending further order of this court.

It is so ORDERED.

 C.J.
Parraguirre

cc: Ara H. Shirinian, Settlement Judge
Law Office of Travis E. Shetler, PC
Messner Reeves LLP
McBride Hall