

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANNA MARIE BALTAR, D.O.,
and MIRIAM SITHOLE, APRN,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT, of the State of Nevada, in
and for the County of Clark; and THE
HONORABLE TARA CLARK
NEWBERRY, District Judge,

Respondents,

and

BARRY HEIFETZ, individually,
SPRING VALLEY HEALTHCARE,
LLC, a foreign limited-liability
company d/b/a SPANISH HILLS
WELLNESS SUITES

Real Parties in Interest.

Supreme Court Case No.
84984 Electronically Filed
84982 Jul 18 2022 05:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No.
A-20-808436-C

**EMERGENCY MOTION UNDER NRAP 27(e) TO STAY DISTRICT
COURT PROCEEDINGS PENDING ACTION ON PETITION FOR
MANDAMUS**

ACTION REQUESTED BY JULY 25, 2022

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NRAP 27(e) CERTIFICATE

State of Nevada)
) ss.
County of Clark)

Brandon C. Verde, Esq. being first duly sworn, deposes and states:

1. I am an attorney of record for Petitioners and make this Affidavit pursuant to Nev. R. App. P. 8 and Nev. R. App. P. 27(e).
2. The facts are based upon my own personal knowledge as counsel for Petitioners.
3. The contents of the foregoing Motion for Stay, and the following Memorandum of Points and Authorities are true and based upon my personal knowledge, except as to those matters stated on information and belief.
4. This Motion for Stay complies with Nev. R. App. P. 8 and Nev. R. App. P. 27(e).
5. The office addresses of the attorneys for the Real Parties in Interest are as follows:

Jennifer Morales, Esq.
Shirley Blazich, Esq.
Shannon Wise, Esq.
Claggett & Sykes Law Firm
4191 Meadows Lane, Suite 100
Las Vegas, NV 89107
*Attorneys for Real Party in Interest Heifetz/Real Parties
In Interest*

Robert C. McBride, Esq.
McBride Hall
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
*Attorney for Additional Parties in Interest,
Spring Valley Health Care, LLC
d/b/a Spanish Hills Wellness Suites*

6. Emergency relief is needed to allow this Court time to make a decision regarding a stay of the District Court proceedings prior to the current trial date of July 25, 2022.

I declare under the penalty of perjury that the foregoing is true and correct.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 18th day of July, 2022.

JOHN H. COTTON & ASSOCIATES

By: /s/ *Brandon C. Verde, Esq.*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Emergency Motion seeks to stay the current District Court proceedings to prevent substantial prejudice against Petitioners. The potential harm here is readily apparent. If the current trial is not stayed and goes forward, the object of the Petitions will be entirely defeated, and Petitioners will have been irreparably harmed, and any subsequent decision by this Court on the Petitions will be moot. Petitioners submitted their Motion for Stay in District Court on Order Shortening Time on July 11, 2022.

On July 18, 2022, Petitioners' Motion for Stay was denied by Respondent despite the irreparable harm highlighted in their Motion. (*Ex. "A."*) Shockingly, Respondent further stated that Real Party in Interest Heifetz's right to a civil trial was "***more important than Defendants' insurance premiums.***" *Id.* Respondent's reasoning further highlights its abuse of discretion to ignore the substantial amount of prejudice Petitioners will encounter at trial. Subjecting Petitioners to be sitting next to a co-defendant with a presumption of liability against it is substantially prejudicial and will suffer irreparable harm. Therefore, Petitioners seek relief from this Court to grant Petitioners' Motion for Stay.

II.

ARGUMENT

A. PETITIONERS ARE ENTITLED TO SEEK A STAY FROM THIS COURT ON AN EMERGENCY BASIS TO AVOID IRREPARABLE HARM

NRAP 8(a)(2) provides in pertinent part that a motion to stay the proceedings in the District Court pending resolution of a petition filed with the Supreme Court for a writ may be made to the Supreme Court for an extraordinary writ may be made to the Supreme Court upon satisfaction of either of the following: (1) the party first moved in the district court for a stay unless doing so was impracticable; or (2) the party filed the motion for stay in the District Court but did not obtain the relief requested and sets forth the reasons given by the district court for its action.

The Petitioners submitted their Motion for Stay on Order Shortening Time in the District Court on July 11, 2022, which was granted on Order Shortening Time on July 13, 2022. The District Court set this matter to be heard on July 18, 2022, to be heard in chambers. Respondent issued a Minute Order on July 18, 2022, denying Petitioners' Motion for Stay on the basis that Petitioners have not met any of the four factors under NRAP 8(c). (*Ex. "A"*) Respondent fails to understand that Petitioners' Writ of Mandamus regarding a separate trial entirely impacts trial rather than judgment. Petitioners' Writ speaks to the amount of irreparable harm

that will be suffered by Petitioners.

B. PETITIONERS ARE ENTITLED TO A STAY PURSUANT TO NRAP 8(c)

A petition for extraordinary writ relief is available "to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion." *Nev. Yellow Cab Corp. v. Eighth Jud. Dist. Ct.*, 123 Nev. Adv. Op. No.6, 152 P.3d 737, 740 (Mar. 8,2007) (emphasis added); *see also Scarbo v. Eighth Jud. Dist. Ct.*, 125 Nev. Adv. Op. No. 12,206 P.3d 975,977 (Apr. 30, 2009) (explaining that a writ of mandamus may issue where a district court has manifestly abused its discretion). The party seeking a stay must first seek a stay from the District Court, as opposed to an appellate court. NRAP 8(a)(1)(A). Petitioners filed their Motion for Stay in District Court pursuant to NRAP (a)(1)(A), which was denied.

The factors to be considered by the Court when considering whether to issue a stay in the proceedings when an appellate issue is pending before the Nevada Supreme Court are (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP 8(c); *Fritz Hansen A/S v. Eighth Judicial District Court*, 116 Nev. 650, 657 (2000). The Supreme Court has not held that any

one of these factors carries more weight than any of the others, but in a particular situation, if one or two factors are especially strong, they are able to counterbalance any weaker factors. *Mikohn Gaming Corporation v. McCrea, Jr.*, 120 Nev. 248, 251 (2004) (“We have not indicated that any one factor carries more weight than the others, although . . . if one or two factors are especially strong, they may counterbalance other weak factors.”).

Petitioners have demonstrated that a stay is warranted pending resolution of Petitioners’ writ of mandamus regarding the denial of their Motion for Separate Trial. Respondent granted Real Party in Interest Heifetz’s Motion for Sanctions against Real Party in Interest Spanish Hills. Respondent ordered Real Party in Interest Spanish Hills’ Answer and affirmative defenses to be stricken, and that it would only be allowed to try the case on damages. Thus, if Petitioners are forced to sit next to a co-defendant that has a presumption of liability against it, then the object of the emergency writ petition regarding a separate trial would be defeated.

The second factor for consideration pursuant to NRAP 8, whether the petitioners will suffer irreparable or serious injury if the stay is denied, also weighs in favor of granting the stay. Petitioners will be subject to irreparable harm if they are forced to sit next to a presumptively liable co-defendant with a stricken Answer and affirmative defenses for discovery abuse.

The third factor for consideration pursuant to NRAP 8, whether the real

party in interest will suffer irreparable or serious injury if the stay is granted, also weighs in favor of granting the stay in proceedings. Real Party in Interest Heifetz in the underlying matter, will not suffer irreparable or serious injury should this stay be granted. Plaintiff has not presented any admissible evidence which shows that he is in declining health.

The final factor for consideration pursuant to NRAP 8, whether Petitioners are likely to prevail on the merits on both writ petitions, also weighs heavily in favor of granting the stay requested. Petitioners' Motion for Separate Trial emphasized the prejudice Petitioners will suffer if forced to be tried together with a co-defendant that has a presumption of liability against it.

III.

CONCLUSION

If a stay is not entered, the Petitioners are likely to suffer irreparable harm. For the reasons stated above, the Court should stay the District Court proceedings pending the outcome of Petitioners' two pending Petitions before this Court.

Dated this 18th day of July 2022.

JOHN H. COTTON & ASSOCIATES, LTD

/s/ John H. Cotton

John H. Cotton, Esq. (Nev. Bar No. 05268)

Attorneys for Petitioners

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of July 2022, I served the foregoing **EMERGENCY MOTION UNDER NRAP 27(e) TO STAY DISTRICT COURT PROCEEDINGS PENDING ACTION ON PETITION FOR MANDAMUS** upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

The Honorable Tara Clark Newberry
The Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Respondent

Jennifer Morales, Esq.
Shirley Blazich, Esq.
Shannon Wise, Esq.
Claggett & Sykes Law Firm
4191 Meadows Lane, Suite 100
Las Vegas, NV 89107
*Attorneys for Real Party in Interest Heifetz/Real Parties
In Interest*

Robert C. McBride, Esq.
McBride Hall
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
*Attorney for Additional Parties in Interest,
Spring Valley Health Care, LLC
d/b/a Spanish Hills Wellness Suites*

Dated this 18th day of July 2022.

/s/ Arielle Atkinson
An employee of JOHN H. COTTON &
ASSOCIATES, LTD

Exhibit A

A-20-808436-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

July 18, 2022

A-20-808436-C Barry Heifetz, Plaintiff(s)
vs.
Spring Valley Health Care LLC, Defendant(s)

July 18, 2022 3:00 AM Defendants Shanna Marie Baltar, DO and Miriam Sithole, APRN S Motion for Stay on Order Shortening Time

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Carina Bracamontez-Munguia/cbm

PARTIES None. Minute order only – no hearing held.
PRESENT:

JOURNAL ENTRIES

The Court has reviewed the July 11, 2022 Defendants Shanna Marie Baltar, DO and Miriam Sithole, APRN's Motion for Stay on Order Shortening Time, July 11, 2022 Defendant Spring Valley Healthcare, LLC d/b/a Spanish Hills Wellness Suites Joinder to Motion for Stay, July 14, 2022 Plaintiff's Opposition to Defendant's Motion for Stay on an Order Shortening time and the Joinder Thereto, and the entirety of the Record.

In determining whether a stay is warranted, the Court considers four factors:

- 1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- 2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;
- 3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
- 4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Fritz Hansen A/S v. Eighth Judicial Dist. Court, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (citing NRAP 8(c); Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948)).

Further, the party requesting a stay must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay. Fritz Hansen A/S, 116 Nev. at 659, 6 P.3d at 987 (quoting Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. 1981)).

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Minutes Date: July 18, 2022

The COURT FINDS the arguments contained within Plaintiff's Opposition persuasive and adopts them. The COURT FINDS that it is unlikely that the Nevada Supreme Court will entertain Defendants' Writ, as those issues do not impact trial, but rather, only the judgment. Here, it is the Plaintiff who is the only party that would be irreparably harmed or suffer serious injury due to his advanced age and the fact that a Plaintiff's health is always a concern. Staying the trial and further denying Plaintiff his right to a civil jury trial is more harmful to Plaintiff than it is to Defendants' insurance premiums.

Further, the Defendants have known about the firm July setting since January 2022. The Court and Plaintiff accommodated the Defendants and moved trial to July 25, 2022. The Plaintiff will suffer irreparable harm if the case is stayed. Defendants completely disregard Plaintiff's advanced age and findings of the Court that bifurcating the trial causes undue prejudice to Plaintiff.

Defendants have not demonstrated that they are likely to prevail on the merits of their writ petition. The issues of whether punitive damages and elder abuse are proven in this case, are issues for appeal after trial has finished, and are not issues for a Writ of Mandamus. The Court of Appeals, after the trial has taken place, is the proper place for Defendants to argue that Plaintiff has not met NRS 42.005 given the specific facts of the case and what was presented to the District Court in rendering denial of Defendants Motion for Summary Judgment which was solely a determination that sufficient evidence had been set forth for the jury to decide and the ultimate conclusion reached by the jury once trial has concluded.

In considering the four factors in granting a stay of a case, the COURT FINDS that the Defendants cannot meet any of the four factors set forth under NRAP 8(c) and therefore their request for a stay is DENIED in its entirety.

Therefore, it is hereby ORDERED the July 11, 2022 Defendants Shanna Marie Baltar, DO and Miriam Sithole, APRN's Motion for Stay on Order Shortening Time and July 11, 2022 Defendant Spring Valley Healthcare, LLC d/b/a Spanish Hills Wellness Suites Joinder to Motion for Stay are DENIED.

Per EDCR 7.21, Counsel for Plaintiff to prepare the Proposed Order, circulate for signature as to form and content, and submit to dc21inbox@clarkcountycourts.us within 14 days.

CLERK'S NOTE: The above minute order has been electronically served to parties via e-mail and/or Odyssey File & Serve. // cbm 07-18-2022