

**IN THE SUPREME COURT
OF THE STATE OF NEVADA**

ALI KIA, M.D.,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, THE HONORABLE
CRYSTAL ELLER, PRESIDING,

Respondent,

and

CHLOE GREEN, FRANK J.
DELEE, M.D., FRANK J. DELEE,
MD, PC, SUNRISE HOSPITAL AND
MEDICAL CENTER, LLC, AND
NEVADA HOSPITALIST GROUP,
LLP,

The Real Parties in Interest.

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Clerk of Supreme Court

Supreme Court Case No.: 87300

Dist. Court Case No.: A-17-757722-C

**PETITIONER’S REPLY IN SUPPORT OF MOTION TO STAY DISTRICT
COURT PROCEEDINGS**

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ARGUMENT

A. The Object of The Writ Will Be Defeated Without a Say

Ms. Green speculates that the only reason Dr. Kia filed the petition was to achieve delay, and she premises her argument on the notion that he has been a party to this case “since he filed his answer to Sunrise’s third-party complaint on August 2, 2019.” (Opposition, p. 6, lines 7 – 8). That is untrue. The District Court dismissed those claims against Dr. Kia on June 2, 2020. (APPENDIX000117, lines 4 – 7). At that point, Dr. Kia was not a party to the case until December 14, 2020, when Ms. Green filed her amended complaint. (APPENDX000274).

She further premises her argument on the claim that Dr. Kia attempted to conceal his actions. (Opposition, p. 6, lines 15 – 20). That is untrue. Dr. Kia authored and signed Ms. Green’s discharge notes on June 16, 2016. (APPX000688, p. 26, lines 11 – 22). Also, as Ms. Green admitted, she believed that Dr. Kia had caused her a legal injury after taking his extensive deposition on November 14, 2018. (Ms. Green’s Opposition to the Writ Petition, p. 11). Dr. Kia has been open, and is not attempting to conceal his actions.

With respect to the sanctions portion of the writ petition, Ms. Green argues that Dr. Kia should have brought a motion for reconsideration to cure any defects but offers no legal authority for that proposition. (Opposition, p. 6, lines 24 – 28).

There is no such requirement. In *Black v. Eight Judicial Dist. Court*, ___ Nev. ___, 531 P.3d 1267, 2023 WL 4539644 (Nev. S. Ct. Case No. 86787, July 13, 2023) (unpublished disposition), the Court reversed a sanctions order on due process grounds, noting that the aggrieved party did not file a motion for reconsideration. The Supreme Court did not impose a requirement to bring such a motion to potentially cure any defects before filing a writ petition.

B. Denial of Due Process Irreparably Harms Dr. Kia

Ms. Green argues that the lack of notice and the opportunity to be heard is a procedural rather than substantive due process right. (Opposition, p. 7, lines 5 – 9). While Dr. Kia concedes that the due process right at issue may be more accurately categorized as procedural in nature, it is a distinction without a difference in this case. When analyzing these situations, the Supreme Court generally does not distinguish between the two, and holds that the opportunity for notice and to be heard is a due process right worth protecting. See *Black* at *1 and *Valley Health System, LLC v. Estate of Jane Doe*, 134 Nev. 634, 647, 427 P.3d 1024, 1032 (2018). Simply put, a due process is an important right.

C. Ms. Green Will Not Suffer Irreparable Harm

Ms. Green essentially argues that her case will be delayed. (Opposition, p. 8, lines 12 – 21) (“This is one of the district court’s oldest cases and needs to be timely tried on the merits.”). Delay does not constitute irreparable harm. *Fritz*

Hansen A/S v. Eighth Judicial District Court, 116 Nev. 650, 658, 6 P.3d 982, 986 – 987 (2000). This factor weighs in favor of a stay.

D. The Fourth Factor Weighs in Favor of a Stay Because Dr. Kia Is Likely to Prevail

Ms. Green asserts that Dr. Kia’s argument in the writ petition is identical to the one he made in his prior petition. (Opposition, p. 8, lines 23 – 28). That is incorrect, and she continues to conflate Dr. Kia’s prior motion to dismiss under NRCp 12(b)(5) with his summary judgment motion that is at issue here. These are two different types of motions made at different points in the case, and different analytical standards apply. They are simply not the same.

Turning to the sanctions portion of the writ petition, Ms. Green argues that *Black* does not apply. (Opposition, p. 8, lines 27 – 28, p. 29, lines 1 – 7). *Black* applies because it involves the same action that occurred here. The district court in *Black* improperly levied sanctions without an opportunity to be heard. *Black* at *1. As in *Black*, the Court should reverse the District Court’s decision. This factor weighs in favor of a stay.

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CONCLUSION

For the reasons stated above, Dr. Kia requests that the Court grant his motion and stay the District Court proceedings pending a decision on his writ petition.

Date: February 8, 2024

NAYLOR & BRASTER

By: /s/ John M. Naylor

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of NAYLOR & BRASTER, that service of the foregoing **PETITIONER'S REPLY IN SUPPORT OF MOTION TO STAY DISTRICT COURT PROCEEDINGS** was made on February 8, 2024, via mandatory electronic service via the Court's e-filing system to:

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