

IN THE SUPREME COURT OF THE STATE OF NEVADA

BIONICA, INC., A NEVADA CORPORATION, F/K/A HAMILTON-MAY CORPORATION, A NEVADA CORPORATION,

Appellant,

vs.

METABOLIC INDUSTRIES, A NEVADA CORPORATION;  
HAMILTON-MAY CORPORATION, A NEVADA CORPORATION; AOKI DIABETES RESEARCH INSTITUTE, A CALIFORNIA CORPORATION;  
ADVANCED DIABETES TREATMENT CENTERS, LLC, A FLORIDA LIMITED LIABILITY COMPANY; THOMAS T. AOKI, M.D.; MICHAEL ARCANGELI; NATHAN NACHLAS, M.D.; AND GREGORY GILBERT, INDIVIDUALS,  
Respondents.

No. 44157

**FILED**

AUG 26 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY J. [Signature]  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting a preliminary injunction. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. Respondents Metabolic Industries and Thomas T. Aoki, M.D. have moved to dismiss this appeal on the basis that appellant

Bionica, Inc. was not a party to the action below with standing to appeal the preliminary injunction.<sup>1</sup> Bionica opposes the motion.

Having considered the motion and opposition, we conclude that regardless of whether Bionica was a party to the action below, Bionica lacks standing to appeal because Bionica was not aggrieved by the district court's preliminary injunction order. We have held that a person or entity is aggrieved when either a personal or property right is substantially and adversely affected by the district court's ruling.<sup>2</sup>

Here, the September 20, 2004 preliminary injunction order enjoined Metabolic Treatment Centers, Inc. from engaging in any marketing, licensing, or sublicensing activity related to the Metabolic Activation Therapy, with certain specified exceptions. The order did not enjoin Bionica from any activity. The order only arguably affected Bionica to the extent that it made the specific finding that Bionica had no authority to grant licensing rights to Metabolic Treatment Centers, Inc. But this finding is merely preliminary, as it was made in the context of deciding the preliminary injunction motions. Thus, reversing the order that enjoins only Metabolic Treatment Centers, Inc. would not give any

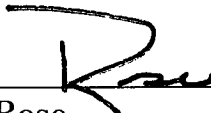
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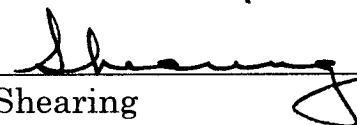
<sup>1</sup>See NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994).

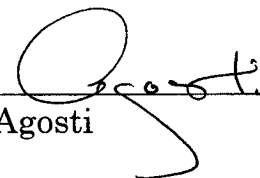
<sup>2</sup>Id. at 446, 874 P.2d at 734.

relief to Bionica. Accordingly, we grant the motion, and dismiss this appeal.<sup>3</sup>

It is so ORDERED.<sup>4</sup>

  
\_\_\_\_\_, V.C. J.  
Rose

  
\_\_\_\_\_, Sr. J.  
Shearing

  
\_\_\_\_\_, Sr. J.  
Agosti

cc: Hon. Brent T. Adams, District Judge  
Demetras & O'Neill  
Law Offices of Mark Wray  
Mark H. Gunderson, Ltd.  
Washoe District Court Clerk

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<sup>3</sup>We note that Bionica may appeal from the final judgment in this case, if aggrieved.

<sup>4</sup>The Honorable Miriam Shearing, Senior Justice, and the Honorable Deborah A. Agosti, Senior Justice, participated in the decision of this matter under a general order of assignment entered on July 14, 2005.