

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 34586

MEDICAL DEVICE ALLIANCE, INC.,

Appellant,

vs.

ROBERT AHR, AN INDIVIDUAL;
 ANTOINETTE AHR, AN INDIVIDUAL;
 RICHARD ALBIN, AN INDIVIDUAL;
 DONNA ALBIN, AN INDIVIDUAL;
 NICHOLAS ALEXANDER, TRUSTEE;
 GLENN ALPERT, TRUSTEE; GREGORY
 ANDERSON, AN INDIVIDUAL; ANTIN &
 HAAS; LESTER AROH, AN INDIVIDUAL;
 KENNETH ASCH, AN INDIVIDUAL;
 JULIAN BEALE, AN INDIVIDUAL;
 RICHARD BERTI, AN INDIVIDUAL;
 MARGUERITE BERTI, TRUSTEE;
 FREDERICK BINKLEY, TRUSTEE;
 MICHAEL BOGGS, AN INDIVIDUAL;
 DONALD BORDEN, AN INDIVIDUAL;
 JEFFREY BRENNER, AN INDIVIDUAL;
 BELLE BRONFELD, AN INDIVIDUAL;
 LARRY BRUNGARDT, AN INDIVIDUAL;
 WILLIAM COLEMAN BRYAN, AN
 INDIVIDUAL; CABRILLO CARD. MED.
 GP. (R. ROTHCHILD); JOSEPH
 CAMARDESE, AN INDIVIDUAL; CHELSEA
 ASSOCIATES (RANDALL HARRIS);
 WARREN CLARK, AN INDIVIDUAL;
 ROBERT CLARK, AN INDIVIDUAL;
 HAROLD COHEN, AN INDIVIDUAL;
 WILLIAM CONLEY, AN INDIVIDUAL;
 TED COOPER, AN INDIVIDUAL; SEAN
 COUGHLIN, AN INDIVIDUAL; KANAAN
 "KENNY" DANDACHI, AN INDIVIDUAL;
 THOMAS DEAKMAN, AN INDIVIDUAL;
 STEVEN DRESNER, AN INDIVIDUAL;
 LAWRENCE DUMAIN, AN INDIVIDUAL;
 DEANNA DUMAIN, AN INDIVIDUAL;
 JAMES "JIM" FAYETTE, AN
 INDIVIDUAL; MARK FERGUSON, AN
 INDIVIDUAL; STEPHEN FROST, AN
 INDIVIDUAL; SUZANNE FROST, AN
 INDIVIDUAL; EDWARD I. GALFSKY, AN
 INDIVIDUAL; JOHN GASSER, AN
 INDIVIDUAL; ROBERT GAULT, AN
 INDIVIDUAL; THELMA GAULT, AN
 INDIVIDUAL; DARRELL GLAHN, AN
 INDIVIDUAL; BLYTHE GLAHN, AN
 INDIVIDUAL; MICHAEL GROSSMAN, AN
 INDIVIDUAL; BRIAN HALINA, AN
 INDIVIDUAL; KATHLEEN HELLMERS,
 TRUSTEE; KENNETH HERSH, AN

FILED

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JANETTE M. BLOOM
 CLERK OF SUPREME COURT
 BY *Richard*
 CHIEF DEPUTY CLERK

INDIVIDUAL; HILLIARD LTD.
PARTNERSHIP; DANIEL HILLIARD, AN
INDIVIDUAL; WJ HILLIARD FAMILY
TRUST; SY HIMELSTEIN, AN
INDIVIDUAL; INNER SOURCES, INC.;
MIKE ISMAIL, AN INDIVIDUAL; HERB
JOHNSON, AN INDIVIDUAL; BRENDA
JOHNSON, AN INDIVIDUAL; GABRIEL
KAPLAN, AN INDIVIDUAL; L. ROLLS
(NOMINEES) LTD. (L. ROLLS);
WILLIAM LARRABEE, AN INDIVIDUAL;
BONNIE LARREBEE, AN INDIVIDUAL;
PETER LAWRENCE, AN INDIVIDUAL;
MARK LEGGIO, AN INDIVIDUAL;
LEVANTHAL PAGET LLC, AN
INDIVIDUAL; JAMES LYNCH, AN
INDIVIDUAL; EDWARD MARANDOLA,
JR., AN INDIVIDUAL; FILIZI
"PHILIP" MATHIS, AN INDIVIDUAL;
FRANK MATHIS, AN INDIVIDUAL;
ROBERT MCCURDY, AN INDIVIDUAL;
EDWARD LOW MILLS, AN INDIVIDUAL;
JAMES MILLS, AN INDIVIDUAL;
MICHAEL MOELLER, AN INDIVIDUAL;
ALBERT MOLINARO, AN INDIVIDUAL;
STEVE NATALE, AN INDIVIDUAL; KAY
NIX, AN INDIVIDUAL; LINDA WALLACE
PATE, AN INDIVIDUAL; ROBERT
PEKELNICKY, AN INDIVIDUAL; EMILY
PEKELNICKY, AN INDIVIDUAL; JON
PETERS, AN INDIVIDUAL; ALICE
POSHKUS, AN INDIVIDUAL; REGINA
POSHKUS, AN INDIVIDUAL; NICHOLAS
POSHKUS, AN INDIVIDUAL; DAVID B.
RADDEN, AN INDIVIDUAL; RICHARD
ROSSI, AN INDIVIDUAL; JAMES
SCHLOEMAN, AN INDIVIDUAL; DAVID
A. SCHULT, AN INDIVIDUAL; JEFF
SEAVEY, AN INDIVIDUAL; MORRIS
SILVER, AN INDIVIDUAL; HOLLIS R.
SMITH, AN INDIVIDUAL; LEMBITU
SORRA, M.D., AN INDIVIDUAL; ARTHUR
STEINBERG, AN INDIVIDUAL; IRA
ACCOUNT; CARL F. STEINFELD, AN
INDIVIDUAL; KEN STOKES, AN
INDIVIDUAL; THOMAS SULZBACH, AN
INDIVIDUAL; EUNA SULZBACH, AN
INDIVIDUAL; ROBERT E. WALKER, AN
INDIVIDUAL; DAVID WILSON, AN
INDIVIDUAL, PLAINTIFFS;
CHIEFTAIN LLC, WILLIAM J. DOWNEY,
JR., AN INDIVIDUAL; MARY ANN
FLYNN, AN INDIVIDUAL; R. KARL
LICHTY, AN INDIVIDUAL; LAURENS L.
LICHTY, AN INDIVIDUAL; LEONARD
MAKOWKA, AN INDIVIDUAL; AND KURT
G. TOPPEL, AN INDIVIDUAL,

Respondents.

Motion to dismiss appeal based on lack of jurisdiction. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Motion denied.

William E. Cooper Law Offices, Las Vegas,
for Appellant.

James, Driggs, Walch, Santoro, Kearny, Johnson & Thompson, and John E. Ham, and Aviva Y. Gordon, Las Vegas,
for Respondents.

BEFORE YOUNG, AGOSTI and LEAVITT, JJ.

O P I N I O N

PER CURIAM:

This is an appeal from an order of the district court appointing a temporary receiver over the appellant corporation.

On March 19, 1999, respondents, some of the shareholders of appellant Medical Device Alliance (MDA), filed a complaint in Eighth Judicial District Court, and filed a motion seeking the appointment of a temporary receiver for MDA. See NRS 78.650. In the motion, respondents argued that the directors of MDA had engaged in improper conduct. On June 30, 1999, after a hearing, the district court granted the motion and appointed a temporary receiver. The district court made an express finding that the directors of MDA have been "guilty" of fraud, collusion or gross mismanagement, as well as misfeasance, malfeasance or nonfeasance, and that the assets of the corporation were in danger of waste, sacrifice or loss through attachment, foreclosure, or litigation. On July 26, 1999, appellant filed a timely notice of appeal.

On September 2, 1999, respondents filed a motion to dismiss the appeal, and an opposition was filed on September 13, 1999. Respondents make two arguments that the attorney who purports to represent MDA in this appeal lacks standing to

pursue the appeal. First, they contend that the receiver did not authorize appellant's attorney to file the notice of appeal, because the order that the district court entered gave the receiver the sole power to institute actions in court. Second, they maintain that the appellant, MDA, is not an aggrieved party. The rules of this court restrict appeals to those sought by aggrieved parties. See NRAP 3A(a); see also Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994) (explaining that this court has jurisdiction to entertain an appeal only where the appeal is brought by an aggrieved party). Here, respondents urge that only the former board of directors is seeking the instant appellate review, not the corporation, which is represented by the receiver. Their argument is that the corporation was a party below, but is not aggrieved, and that the former board of directors may be aggrieved, but were not parties below.

We conclude that the corporation has standing to appeal through the board of directors. This court's rules provide for an appeal from an order appointing a receiver. See NRAP 3A(b)(2). Where a receiver is appointed to oversee the operations of a corporation, the corporation is the aggrieved party and has a right to appeal from that order. See Luckenbach v. Laer, 212 P. 918, 920 (Cal. 1923). This court has previously entertained such an appeal by a corporation from an order appointing a receiver. See Nishon's Inc. v. Kendigian, 91 Nev. 504, 538 P.2d 580 (1975). The corporation is aggrieved because its normal operations and processes pursuant to its articles of incorporation and bylaws have been disrupted by the receiver's appointment. See NRAP 3A(a). Although it may be argued that the corporation is not aggrieved because the order appointing a receiver is in its best interests, such an argument assumes the proposition that

this appeal is intended to decide, specifically, whether the district court's appointment of a receiver was proper under the circumstances. Further, "[i]t is not necessary that a receiver authorize an appeal by a corporation claiming to be aggrieved by the order appointing him if the corporation is a party of record to the proceedings from which the appeal is taken." Pratt v. Robert S. Odell & Co., 122 P.2d 684, 686 (Cal. Ct. App. 1942). We therefore deny the motion to dismiss the appeal.

<u>Young</u> Young	J.
<u>Agosti</u> Agosti	J.
<u>Leavitt</u> Leavitt	J.