

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF ENDOSCOPY CENTER
AND ASSOCIATED BUSINESSES AND
COORDINATED CASES,

No. 53676

SOUTHERN NEVADA HEALTH DISTRICT,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE ALLAN R. EARL, DISTRICT
JUDGE,

Respondents,

and

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY
CENTER OF NEVADA, LLP; MICHAEL
WASHINGTON; SONIA ORELLANA-RIVERA;
ELADIO CARRERA, M.D.; VISHVINDER
SHARMA, M.D.; DIPAK K. DESAI, M.D.;
MAHENDRA DEFONSEKA, M.D.; NICOLAE
WEISZ, M.D.; SHAHID WAHID, M.D.; SANJAY
NAYYAR, M.D.; ALBERT MASON, M.D.;
DAVID MANUEL, M.D.; SNEHAL DESAI,
M.D.; AND DIPESH BANKER, M.D.,
Real Parties in Interest.

FILED

DEC 22 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Swer*
DEPUTY CLERK

ORDER DISMISSING PETITION AS TO PARTIES IN BANKRUPTCY,
DENYING PETITION FOR WRITS OF MANDAMUS AND
PROHIBITION AS TO REMAINING PARTIES AND VACATING STAY
OF DISCOVERY IMPOSED BY THIS COURT'S MAY 19, 2009, ORDER

This original petition for writs of mandamus and prohibition challenges a district court order approving in part and denying in part petitioner's objections to the special master's report and recommendations.

Dismissal of real parties in interest in bankruptcy

This petition was filed on April 27, 2009. On July 24, 2009, four days after petitioner, the Southern Nevada Health District (SNHD)

filed its reply to real parties in interest's answers, real parties in interest the Endoscopy Center of Southern Nevada, LLC, and Gastroenterology Center of Nevada, LLP, filed a suggestion of bankruptcy in this court. Accordingly, pursuant to the automatic bankruptcy stay of 11 U.S.C. § 362(a)(1) (2006), this court entered an order staying this petition on July 30, 2009. Real party in interest Dipak K. Desai, M.D., subsequently notified this court that he, too, had filed for bankruptcy.

Given the applicability of the automatic stay, this petition may continue to linger on this court's docket, as it has since this court's July 30, 2009, order staying the petition. As a result, we conclude that judicial efficiency will be best served if this petition is dismissed as to real parties in interest Endoscopy Center of Southern Nevada, LLC, Gastroenterology Center of Nevada, LLP, and Dipak K. Desai, M.D., without prejudice to the parties' right to move to reinstate the petition upon the lifting of the bankruptcy stay. Because a dismissal without prejudice will not require this court to reach the merits of this petition and is not inconsistent with the primary purposes of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that such a dismissal will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (holding that a post-bankruptcy dismissal will violate the automatic stay “where the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case”); see also IUFA v. Pan American, 966 F.2d 457, 459 (9th Cir. 1992) (holding that the automatic stay does not preclude dismissal of an appeal so long as dismissal is “consistent with the purpose of [11 U.S.C. §362(a)]”). As we dismiss the petition, without prejudice, as to these

parties, we vacate the stay of this petition imposed by our July 30, 2009, order.¹

Denial of petition

We now turn to the merits of the instant petition, which seeks both mandamus and prohibition relief, as to the remaining real parties in interest. Mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if such petitions will be considered. Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). SNHD, as the petitioner, bears the burden of demonstrating that this court's intervention by way of extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

As an initial matter, with respect to SNHD's request for a writ of prohibition to bar the district court from requiring that SNHD prepare privilege logs, we conclude that SNHD's contentions lack merit and therefore deny its request for a writ of prohibition as to this issue. Having rejected this argument, we now turn to SNHD's assertions regarding its various claimed privileges.

Initially, SNHD's asserts deliberative process and investigatory privileges. We previously rejected virtually identical arguments from SNHD with regard to these issues in a related case, Southern Nevada Health District v. District Court, Docket No. 57056 (Order Denying Petition, December 14, 2010). As we have already addressed and rejected SNHD's arguments as to these privileges in this earlier decision, we decline to revisit them here and instead conclude that

¹In light of our decision to dismiss, without prejudice, the petition as to the Endoscopy and Gastroenterology Centers, their May 29, 2009, motion for determination is denied as moot.

our intervention by way of extraordinary relief is not warranted with regard to these arguments.

As for the arguments advanced by SNHD regarding its claimed official information privilege, we conclude that SNHD has not met its burden of demonstrating that our intervention by way of extraordinary relief is warranted at this time. Pan, 120 Nev. at 228, 88 P.3d at 844. Accordingly, we decline to exercise our discretion to consider the merits of this issue.² Smith, 107 Nev. 674, 818 P.2d 849.

Next, turning to SNHD's contentions regarding the purportedly "sealed" deposition testimony, we note that, to the extent this issue remains viable after our decision regarding SNHD's claimed privileges, it is not ripe for our consideration. In discussing this issue, SNHD acknowledges that the dispute over the release and use of this information arose after the district court entered the ruling that SNHD challenges in this petition. As a result, any dispute over whether the subject deposition testimony remains "sealed" per the agreement of certain parties should be presented to the district court in the first instance.

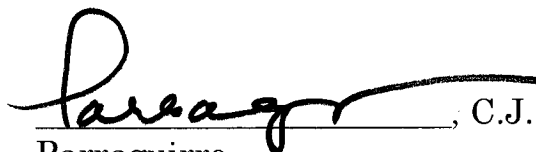
²In denying the related petition filed in Docket No. 57056, we recognized the sufficiency of the protections afforded in the special master's order at issue in that case with regard to SNHD's claimed official information privilege. Southern Nevada Health District, Docket No. 57056 (Order Denying Petition, December 14, 2010). As such, our denial of the instant petition with regard to SNHD's official information privilege argument is without prejudice to SNHD's right to seek reconsideration of the district court's ruling on the official information privilege, in district court, to obtain similar protections from the district court.

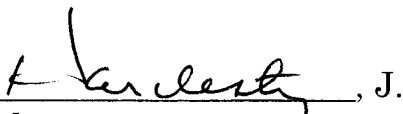
Accordingly, having fully considered the documents before us, we conclude that our intervention by way of extraordinary relief is not warranted and we deny the petition.³ Smith, 107 Nev. 674, 818 P.2d 849.

This court's May 19, 2009, order staying discovery

Because we deny this petition, the temporary stay of discovery imposed by this court's May 19, 2009, order is vacated in its entirety. And as we deny this petition, SNHD's motion for a stay is denied as moot.

It is so ORDERED.⁴


_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Douglas

³In light of our ruling on this matter, we need not address SNHD's arguments regarding any waiver of its claimed privileges. Additionally, to the extent that concerns over the dissemination of personal health information remain, we note our conclusion, in denying SNHD's request for relief based on a so-called personal health information privilege in Docket No. 57056, that "redacting all information identifying individuals that are not litigants in the related Endoscopy cases" provides adequate protection with regard to personal health information. Southern Nevada Health District, Docket No. 57056 (Order Denying Petition, December 14, 2010). Finally, to the extent that any of SNHD's arguments or assertions are not specifically addressed in this order, we have considered those contentions and conclude they are without merit.

⁴As we conclude that oral argument of this matter is not warranted, we deny SNHD's request, in its petition, that this case be orally argued.

cc: Hon. Allan R. Earl, District Judge
Marquis & Aurbach
Alverson Taylor Mortensen & Sanders
Bonne, Bridges, Mueller, O'Keefe & Nichols/Las Vegas
Edward M. Bernstein & Associates/Las Vegas
MacDonald Devin, PC/Dallas
McNulty Law Firm
Schuering Zimmerman Scully Tweedy & Doyle LLP
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Eighth District Court Clerk