

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF ENDOSCOPY
CENTER OF SOUTHERN NEVADA AND
ASSOCIATED BUSINESSES AND
COORDINATED CASES.

No. 54351

IN THE MATTER OF ENDOSCOPY
CENTER OF SOUTHERN NEVADA AND
ASSOCIATED BUSINESSES AND
COORDINATED CASES.

No. 54361

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; AND
GASTROENTEROLOGY CENTER OF
NEVADA, LLP,
Appellants,
vs.
GWENDOLYN MARTIN AND LOVEY
MARTIN,
Respondents.

FILED

JAN 17 2012
TRACEE K. UNDERMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

IN THE MATTER OF ENDOSCOPY
CENTER OF SOUTHERN NEVADA AND
ASSOCIATED BUSINESSES AND
COORDINATED CASES.

No. 54362

JEFF KRUEGER, RN; AND PEGGY
TAGLE, RN,
Appellants,
vs.
KENNETH J. NOGLE,
Respondent.

IN THE MATTER OF ENDOSCOPY
CENTER OF SOUTHERN NEVADA AND
ASSOCIATED BUSINESSES AND
COORDINATED CASES.

No. 54371

SANJAY NAYYAR, M.D.,
Appellant,
vs.
CAROLE GRUESKIN,
Respondent.

IN THE MATTER OF ENDOSCOPY
CENTER OF SOUTHERN NEVADA AND
ASSOCIATED BUSINESSES AND
COORDINATED CASES.

No. 54379

JEFF KRUEGER, RN; AND VINCENT
MIONE, CRNA,
Appellants,

vs.

BONNIE J. BRUNSON AND CARL
BRUNSON,
Respondents.

IN THE MATTER OF ENDOSCOPY
CENTER OF SOUTHERN NEVADA AND
ASSOCIATED BUSINESSES AND
COORDINATED CASES.

No. 54601

JEFF KRUEGER, RN; AND VINCENT
MIONE, CRNA,
Appellants,

vs.

JUNE DOWNING,
Respondent

ORDER DISMISSING APPEALS IN DOCKET NOS. 54361, 54362, AND
54371, DISMISSING APPEALS IN DOCKET NOS. 54379 AND 54601 AS
TO APPELLANT JEFF KRUEGER, RN, AND DIRECTING APPELLANT
JEFF MIONE, CRNA, TO SHOW CAUSE WHY HIS APPEALS IN
DOCKET NOS. 54379 AND 54601 SHOULD NOT BE DISMISSED

These are appeals from a district court order denying a motion to change the place of trial. The appeals have been coordinated, in this court through the master case pending in Docket No. 54351, but the appeals are not consolidated.

Bankruptcy stay dismissals

Appellants Endoscopy Center of Southern Nevada, Gastroenterology Center of Southern Nevada, and Jeff Krueger, RN have filed suggestions of a bankruptcy stay applicable to them, to which

respondents have not filed any response. The automatic bankruptcy stay operates to stay the “continuation” of any “judicial . . . action . . . against the [bankruptcy] debtor.” 11 U.S.C. § 362(a)(1) (2006). An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action in the trial court. See, e.g., Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtors were defendants in the underlying trial court action. Id. In the underlying district court action, these parties were defendants. Accordingly, based on the language of the bankruptcy court’s order applying the stay to “Insured Debtors,” the automatic bankruptcy stay applies to this appeal as to appellants Endoscopy Center of Southern Nevada, Gastroenterology Center of Southern Nevada, and Kruger.

Given the applicability of the automatic stay, the appeals filed by these parties may linger indefinitely on this court’s docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if these parties’ appeals are dismissed without prejudice. Because such a dismissal will not require this court to reach the merits of these appeals and is not inconsistent with the primary purposes of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that the dismissals will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (providing that a post-bankruptcy dismissal violates the automatic stay when “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) (explaining that the automatic bankruptcy stay does not preclude

dismissal of an appeal so long as dismissal is “consistent with the purpose of [11 U.S.C. §362(a)]”). Accordingly, the parties’ appeals are dismissed, without prejudice, as follows:

Docket No. 54361

Appellants Endoscopy Center of Southern Nevada and Gastroenterology Center of Southern Nevada are the sole remaining appellants in this appeal. As a result, this appeal is dismissed, in its entirety, without prejudice to the Centers’ right to move for its reinstatement within 60 days of either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if such a motion is deemed appropriate at that time.

Docket Nos. 54362, 54379, 54601

Appellant Jeff Krueger, RN’s appeals pending under these docket numbers are dismissed, without prejudice to his right to move for their reinstatement within 60 days of either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if such a motion is deemed appropriate at that time.

Status report dismissals

With regard to the appeal pending in Docket No. 54362, the most recent status report filed by appellant Peggy Tagle, RN indicates that an order has been entered dismissing the claims against her in the underlying action. As a result, her appeal from the district court’s venue order is dismissed as moot. See Personhood Nevada v. Bristol, 126 Nev. ___, 245 P.3d 572 (2010) (stating that the duty of this court is to resolve actual controversies and not to render advisory opinions). Having previously dismissed, without prejudice, appellant Jeff Kruger, RN’s appeal in this case, we now dismiss Docket No. 54362 in its entirety.

Turning to Docket No. 54371, this court's most recent status report order directed appellant Sanjay Nayyar, M.D. to show cause why his appeal should not be dismissed as moot based on the fact that the claims brought against him by all plaintiffs, including respondent Carol Grueskin, have been dismissed. Our order cautioned Nayyar that his failure to file a response would result in the dismissal of his appeal. As the time for responding to our status report order has expired without a response from Nayyar, the appeal pending in Docket No. 54371 is dismissed in its entirety.


Vincent Mione, CRNA's appeals pending in Docket Nos. 54379 and 54601


Our dismissal of the appeals pending in Docket Nos. 54361, 54362, and 54371, in their entirety, and the dismissal of appellant Jeff Kruger, RN's appeals in Docket Nos. 54379 and 54601, leaves only appellant Vincent Mione, CRNA's appeals in Dockets Nos. 54379 and 54601 and the master case, Docket No. 54351, pending before this court. Mione is therefore directed to file a response to this order indicating whether any claims, counterclaims, and cross-claims remain pending against him in the district court cases from which his appeals arose, or whether, alternatively, his appeals can be dismissed as moot based on the dismissal of such claims, counterclaims, and cross-claims.¹ See Personhood Nevada, 126 Nev. ____, 245 P.3d 572.

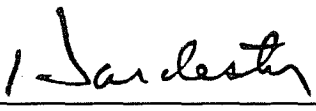
¹With regard to the appeal pending in Docket No. 54601, respondent June Downing's request that this venue appeal be stayed until the completion of trial of the underlying action, which was contained in her response to Mione's most recent status report, is denied.

In addition, to the extent that Mione's appeals have not been rendered moot, we note that the venue change order challenged in those appeals denies Mione's request to change the place of trial without prejudice. As the challenged orders do not explain the reason for denying the motions, without prejudice, however, it is not clear whether the orders constitute a final ruling on the motion to change the place of trial, so that the orders are appealable under NRAP 3A(b)(6). See Sicor, Inc. v. Sacks, 127 Nev. ___, ___ P.3d ___ (Adv. Op. No. 81, December 15, 2011) (concluding that an order denying a motion to change the place of trial, without prejudice, and deferring a final ruling on the motion until after jury selection had been completed did not constitute a final order disposing of the venue change motion and, thus, was not appealable under NRAP 3A(b)(6)). As a result, if Mione asserts that his appeals are not moot, he shall also address whether any appeal from the challenged orders should nonetheless be dismissed as premature under Sacks. Mione shall have 11 days from the date of this order to file and serve his response to this order. Thereafter, respondents shall have five days from the date Mione's response is served to file and serve any reply.

It is so ORDERED.


_____, C.J.
Saitta


_____, J.
Douglas


_____, J.
Hardesty

cc: Bonne, Bridges, Mueller, O'Keefe & Nichols
Buckley King
Lewis Brisbois Bisgaard & Smith, LLP
MacDonald Devin, PC/Dallas
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Wolfe & Wyman, LLP
Craig P. Kenny & Associates
Edward M. Bernstein & Associates/Las Vegas
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Mainor Eglet