IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY ANESTHESIOLOGY CONSULTANTS (BECKETT) PLLC, A NEVADA CORPORATION; SEVEN HILLS SURGERY CENTER, LLC, A NEVADA CORPORATION; PROMED MANAGEMENT GROUP, LLC, A NEVADA CORPORATION; DR. RUDY MANTHEI, AN INDIVIDUAL; AND JOVANNA LEE, AN INDIVIDUAL,
Appellants,
vs.
DAVID ROBISON, M.D., AN INDIVIDUAL; ADAM ARITA, M.D., AN INDIVIDUAL; AUGUST W. CHANG, M.D., AN INDIVIDUAL; BAHBAK ADRANGI, M.D., AN INDIVIDUAL; CHRISTOPHER PHILLIPS, M.D., AN INDIVIDUAL; CHRISTOPHER WALTER, M.D., AN INDIVIDUAL; CHRISTOPHER G. MILLSON, M.D., AN INDIVIDUAL; DANIEL LINK, M.D., AN INDIVIDUAL; DANNY YOUNG, M.D., AN INDIVIDUAL; DAVID ADAMS, D.O., AN INDIVIDUAL; DAVID COOLMAN, M.D., AN INDIVIDUAL; DAVID M. SNIPPER, M.D., AN INDIVIDUAL; DODD HYER, M.D., AN INDIVIDUAL; EDWIN ADOLFO, M.D., AN INDIVIDUAL; FREDERICK RUSSEK, D.O., AN INDIVIDUAL; GEORGE T. CHEN, M.D., AN INDIVIDUAL; GEORGE S. GREANEY, M.D., AN INDIVIDUAL; HANS BERNDES, M.D., AN INDIVIDUAL; JASWINDER SAMRA, M.D., AN INDIVIDUAL; JEFFREY ENDER, D.O., AN INDIVIDUAL; JIAN LI, M.D., AN INDIVIDUAL; JOHN BROUWERS, M.D., AN INDIVIDUAL; JOHN P. ANTER, M.D., AN INDIVIDUAL; JOSEPH PROFETA, M.D., AN INDIVIDUAL; JOSEPH

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WARPINSKI, M.D., AN INDIVIDUAL; KEMIN TSUNG, M.D., AN INDIVIDUAL; KEN A. HUGHES, M.D., AN INDIVIDUAL; LEIGH A. PIERSON, M.D., AN INDIVIDUAL; LOUIS V. DIFRANCESCO, M.D., AN INDIVIDUAL; MARK W. CORRIGAN, M.D., AN INDIVIDUAL; MARTIN H. STRAZNICKY, M.D., AN INDIVIDUAL; MICHELLE BISCHOFF, M.D., AN INDIVIDUAL; QUAN HADUONG, M.D., AN INDIVIDUAL; RAJEEV S. KHAMAMKAR, M.D., AN INDIVIDUAL; RANDAL H. COLQUITT, M.D., AN INDIVIDUAL; ROBERT FISHER, M.D., AN INDIVIDUAL; ROBERT ELSON, M.D., AN INDIVIDUAL; ROBERT MASON, D.O., AN INDIVIDUAL; ROY FONTENOT, M.D., AN INDIVIDUAL; SANDIP SINGH, M.D., AN INDIVIDUAL; SCOTT YOUNG, D.O., AN INDIVIDUAL; SCOTT BOMAN, M.D., AN INDIVIDUAL; STANLEY W. FREEMAN, M.D., AN INDIVIDUAL; STEPHEN GEPHARDT, M.D., AN INDIVIDUAL; STEVEN EMERY BROWN, M.D., AN INDIVIDUAL; THOMAS YEE, M.D., AN INDIVIDUAL; THOMAS BARSON, M.D., AN INDIVIDUAL; VITUS TENG, M.D., AN INDIVIDUAL; WASSIM MADI, M.D., AN INDIVIDUAL; ZOLTAN T. HORVATH, M.D., AN INDIVIDUAL; ALAN SOMPHONE, M.D., AN INDIVIDUAL; SCOTT FIELDEN, M.D., AN INDIVIDUAL; LEEJON MOORE, M.D., AN INDIVIDUAL; LUAN TRAN, M.D., AN INDIVIDUAL; PAUL SCHANBACHER, M.D., AN INDIVIDUAL; KUSH D. PATEL, M.D., AN INDIVIDUAL; ANNETTE TEIJEIRO, M.D., AN INDIVIDUAL; AND ANH L. NGO, M.D., AN INDIVIDUAL,
Respondents.

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting in part and denying in part a preliminary injunction in a contract action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

As appellants and respondents acknowledged in their supplemental briefs, the preliminary injunction was dissolved on September 27, 2010.[1] Given that the preliminary injunction was dissolved during the appeal's pendency, the appeal is now moot. See University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (recognizing that cases presenting live controversies at the time of their inception may become moot by the occurrence of subsequent events); Berkeley Community Health Project v. City of Berkeley, 119 F.3d 794, 795 (9th Cir. 1997) ("Because the district court has vacated its preliminary injunction, this appeal is dismissed as moot."). Although appellants present four arguments as to why this appeal is not moot even though the preliminary injunction is no longer affective, we disagree.

First, appellants argue that this court should determine the propriety of the preliminary injunction because it is "necessary to determine whether [respondents'] breach of contract claims . . . are meritorious" and that this court's decision will effect the outcome of the ongoing litigation. Appellants are mistaken because the contract issues are not before us. See University of Texas v. Camenisch, 451 U.S. 390,

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[1]Appellants' unopposed motion to supplement the record is granted, and the clerk of this court is directed to file appellants' second supplemental appendix, provisionally received in this court on October 4, 2010.

394-95 (1981) (explaining that a party is not required to prove his or her case in full at a preliminary injunction hearing and that it is improper to equate the "likelihood of success" standard that applies to preliminary injunctions with "success" on the merits, which has not been determined at the preliminary injunction stage); compare Nevadans for Sound Gov't, 120 Nev. 712, 100 P.3d 179 (listing factors that the district court must balance in determining whether to grant a preliminary injunction and explaining that this court reviews such determinations for an abuse of discretion based on those factors), with NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 661 (2004) (noting that the district court's factual determinations on contract breach must be based on substantial evidence).

Second, appellants assert that the issue here fits the "capable of repetition, yet evading review" exception to the mootness doctrine. Traffic Control Servs. v. United Rentals, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057 (2004). Appellants' argument, however, is based on the breach of contract issue, which has yet to be tried in the district court and thus is not properly before this court. The only issue before this court is the propriety of the preliminary injunction, which has since been dissolved. The breach of contract issue will not evade review because that issue is presently being litigated in district court and any aggrieved party may appeal from a final judgment, once entered. See NRAP 3A(b)(1). Thus, we reject appellants' capable of repetition, yet evading review argument.

Third, appellants assert that because they were held in contempt for violating the preliminary injunction before it was dissolved, this appeal is not moot, as their liability under the contempt order presents a live controversy. The contempt order, which was entered after the notice of appeal was filed, is not at issue in this interlocutory appeal

from a preliminary injunction. See Mack-Manley v. Manley, 122 Nev. 849, 858 n.15, 138 P.3d 525, 532 n.15 (2006) (noting the procedure for challenging contempt orders); Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000). Accordingly, because the contempt order is not properly before us, it has no effect on the mootness determination.

Fourth, appellants argue that unless this court determines that the injunction was improperly entered, they will not be able to seek wrongful injunction damages in the district court. Respondents seem to agree and state that because they posted a bond under NRCP 65(c), the appeal is not moot, since appellants could collect against the bond if they demonstrate in the district court that the injunction was wrongful. The parties, however, rely on authority regarding permanent injunctions, in which the parties already had the benefit of a trial on the merits. Here, the trial on the merits is pending. Recognizing the distinction between appeals from permanent as opposed to preliminary injunctions, the United States Supreme Court has explained that

> when the injunctive aspects of a case become moot on appeal of a preliminary injunction, any issue preserved by an injunction bond can generally not be resolved on appeal, but must be resolved in a trial on the merits. Where, by contrast, a federal district court has granted a permanent injunction, the parties will already have had their trial on the merits, and, even if the case would otherwise be moot, a determination can be had on appeal of the correctness of the trial court's decision on the merits, since the case has been saved from mootness by the injunction bond.

Camenisch, 451 U.S. at 396. Thus, the issue of whether appellants may recover on the injunction bond does not save this appeal from mootness.[2]

Accordingly, this appeal is moot, and we

ORDER this appeal DISMISSED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Kathleen E. Delaney, District Judge
Leonard I. Gang, Settlement Judge
Bailey Kennedy
Hutchison & Steffen, LLC
Eighth District Court Clerk

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[2]Although appellants also challenge as inadequate the $1,000 bond respondents posted, that issue is moot because the injunction has been dissolved. See Clark v. K-Mart Corp., 979 F.2d 965 (3rd Cir. 1992). On appellants' motion, the district court entered an order on July 20, 2010, increasing the bond amount to $50,000. Respondents chose not to post the increased bond. Respondents were not compelled to post the larger bond, Tracy v. Capozzi, 98 Nev. 120, 642 P.2d 591 (1982), and because they were unwilling to do so, the preliminary injunction was vacated. See NRCP 65(c); Clark, 979 F.2d at 969; Sprint Communications v. CAT Com. Intern., 335 F.3d 235 (3rd Cir. 2003) (explaining that on dissolution of a preliminary injunction, a bond cannot be increased retroactively because the party who sought and obtained the preliminary injunction only consented to liability up to the amount of the bond that it posted).