

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA
DEPARTMENT OF TAXATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,
Respondents,
and
NEVADA WELLNESS CENTER, LLC;
MM DEVELOPMENT COMPANY, INC.;
AND LIVFREE WELLNESS, LLC,
Real Parties in Interest.

No. 81448

FILED

JUL 14 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Yarenyk
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This emergency petition for a writ of prohibition, filed on July 13, 2020, seeks to prevent the district court from proceeding with an evidentiary hearing on, and granting, real parties in interest's motion for case-concluding discovery sanctions. In the petition, petitioner also asks for an immediate emergency stay of the evidentiary hearing, which was scheduled to commence that morning.

Later the same day, we entered an order noting that petitioner had also recently filed an emergency motion below pointing the district court to our recent decision in *State, Dep't of Taxation v. Eighth Judicial District Court*, 136 Nev., Adv. Op. 42, ___ P.3d ___, ___ (July 9, 2020) (holding that a party has "possession, custody, or control" over cell phones


and the information thereon for discovery purposes only “if the party has either actual possession of or the legal right to obtain the material”), and asking the court to vacate the evidentiary hearing, and it was unclear whether the district court had acted on that motion. We directed petitioner to file a status report explaining the procedural posture of the case, including whether the district court had commenced the evidentiary hearing. Petitioner timely filed a status report explaining that the hearing had proceeded on July 13 with chief deputy attorney general testimony and was expected to resume the next day, and that the district court was planning to hear its emergency motion to vacate on July 15. A supplemental status report was filed this morning, in which petitioner explained that the district court had “suspended the evidentiary hearing pursuant to a stay imposed by this Court in a separate appeal,” referring to the above-mentioned case, *State, Dep’t of Taxation*.

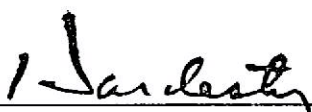
Having reviewed the petition in light of the current status of the district court proceedings, we decline to intervene at this time. The district court has not yet ruled on the motion for case-concluding sanctions and, at this point, has suspended the evidentiary hearing complained of.¹ Petitioner has not demonstrated that serious or irreparable harm would occur if the evidentiary hearing is allowed to proceed and the district court is allowed to rule on the motion. Moreover, the district court also has yet to consider and rule on petitioner’s emergency motion to vacate in light of our recently filed opinion. Accordingly, without prejudice to petitioner’s ability

¹We note that the stay referred to in petitioner’s supplemental status report has been vacated by this court and thus does not preclude the district court from proceeding with the motions in this case. *See State, Dep’t of Taxation*, ___ P.3d at ___ n.4.

to file a new writ petition if subsequent events so warrant. we decline to exercise our discretion to intervene at this time, *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991), and we

ORDER the petition DENIED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Cadish

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Attorney General/Carson City
Attorney General/Las Vegas
Parker, Nelson & Associates
Kemp, Jones & Coulthard, LLP
Eighth District Court Clerk