

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERESA GUBLER AND MARGARET R.
LEAVITT, INDIVIDUALLY AND AS
CO-SPECIAL ADMINISTRATORS OF
THE ESTATE OF MARIA HEATON,
DECEASED,

Appellants,

vs.

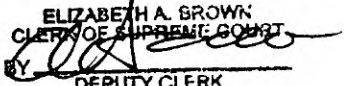
ELLIS, BANDT, BIRKIN, KOLLINS &
WONG, PLLC, A NEVADA DOMESTIC
PROFESSIONAL LIMITED LIABILITY
COMPANY, D/B/A DESERT
RADIOLOGY; SHELIN AGRAWAL &
HYER, PLLC, A NEVADA DOMESTIC
PROFESSIONAL LIMITED LIABILITY
COMPANY, D/B/A DESERT
RADIOLOGY; AND FARHAD SANI,
M.D.,

Respondents.

No. 84926

FILED

AUG 30 2022

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting a motion to dismiss. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

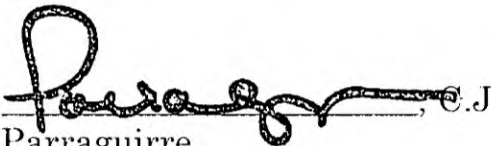
This appeal was docketed on June 27, 2022. The notice of appeal was filed by counsel on behalf of Maria Heaton, and the original caption of this appeal identified Maria Heaton, an individual, as appellant. The case appeal statement and docketing statement were filed on July 19, 2022. Because these documents indicated that Maria Heaton was deceased and Teresa Gubler and Margaret R. Leavitt were proceeding with this appeal on behalf of Maria Heaton's estate, on July 20, 2022, this court sua sponte modified the caption consistent with the caption on this order.

Respondents objected to the modification of the caption and filed a joint motion to dismiss this appeal. The district court dismissed the underlying matter following Maria Heaton's death because no proper party had been substituted pursuant to NRCP 25(a)(1). Respondents asserted that because neither Teresa Gubler nor Margaret R. Leavitt were named as parties of record in the trial court below or made an appearance in the underlying matter, neither of them had standing to bring or maintain this appeal.

On August 8, 2022, this court issued an order stating that Teresa Gubler and Margaret R. Leavitt, as co-special administrators of Maria Heaton's estate, could pursue this appeal on behalf of the estate of Maria Heaton. *See* NRAP 43(a)(1), (3). That order further noted that the substitution of them in the place of Maria Heaton, an individual, in this appeal and the modification of this court's caption was premature because counsel had not filed a motion to substitute Teresa Gubler and Margaret R. Leavitt in their capacity as co-special administrators of the estate of Maria Heaton as appellants in this appeal. *See id.* This court further noted that unless Teresa Gubler and Margaret R. Leavitt were properly substituted in this appeal, this appeal would be subject to dismissal. *See generally Brass v. State*, 129 Nev. 527, 528, 306 P.3d 393, 394 (2013) (holding that "if a party dies pending review of his appeal, the appeal will be dismissed unless the decedent's personal representative is substituted in as a party to the appeal"); *Walker v. Burkham*, 68 Nev. 250, 253-54, 229 P.2d 158, 160 (1951) (upon the death of a party, an action may not proceed until a personal representative is substituted for the decedent). Therefore, this court deferred ruling on the motion to dismiss and directed counsel for appellant to comply with NRAP 43(a)(1) within 7 days. Counsel for appellant was

cautioned that failure to comply would result in the dismissal of this appeal. To date, counsel for appellant has not complied. Accordingly, we grant respondents' joint motion to dismiss this appeal and we

ORDER this appeal DISMISSED.


_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Stiglich

cc: Hon. Joseph Hardy, Jr., District Judge
Ara H. Shirinian, Settlement Judge
Law Office of Travis E. Shetler, PC
Messner Reeves LLP
McBride Hall
Eighth District Court Clerk