

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA; ROBERT
TELLES; AND LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT,

Appellants/Cross-Respondents,

vs.

LAS VEGAS REVIEW-JOURNAL, INC.;
KEITH MOYER; GLENN COOK;
ANASTASIA HENDRIX; RHONDA
PRAST; BRIANA ERICKSON; AND
ARTHUR KANE,

Respondents/Cross-Appellants.

LAS VEGAS REVIEW-JOURNAL, INC.;
KEITH MOYER; GLENN COOK;
ANASTASIA HENDRIX; RHONDA
PRAST; BRIANA ERICKSON; AND
ARTHUR KANE,

Appellants,

vs.

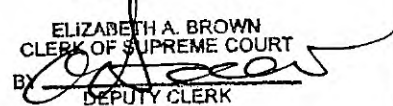
THE STATE OF NEVADA; ROBERT
TELLES; AND LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT,

Respondents.

No. 85553

FILED

JUL 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

✓ No. 85634

*ORDER DISMISSING APPEALS AND CROSS-APPEAL IN PART,
REINSTATING EXPEDITED BRIEFING, AND GRANTING STAY*

These are consolidated appeals and a cross-appeal from a district court order granting a preliminary injunction (Docket No. 85553) and from a district court order denying a second motion for a preliminary injunction (Docket No. 85634), both arising in an action seeking the return of, or protection of, journalistic materials assertedly privileged under NRS 49.275 and the First Amendment. On March 28, 2023, we entered an order

of limited remand for the district court to resolve Las Vegas Metropolitan Police Department's (LVMPD) countermotion to dissolve the preliminary injunction that was appealed and cross-appealed in Docket No. 85553. In that order, we also suspended the briefing schedule; noted that if deemed appropriate, any aggrieved party could file an amended notice of appeal from the district court's written order per NRAP 4(a)(7); and provided that the November 14, 2022, injunction entered by this court in Docket No. 85634 would expire in 60 days.

The district court entered an order on limited remand dissolving the preliminary injunction and setting forth a search protocol concerning the subject materials on May 26, 2023. The protocol includes within its scope the additional materials that are the subject of the appeal in Docket No. 85634. The district court further stayed the May 26 order pending this court's decision on an anticipated future motion for stay. The Las Vegas Review-Journal parties, but no other parties, filed an amended notice of appeal from the May 26 order. Meanwhile, in this court, the parties filed a series of motions and responses in opposition thereto related to extending our preliminary injunction in Docket No. 85634 and, as anticipated by the district court, staying the district court's May 26 order.¹ We resolve the pending procedural issues and motions in these appeals and reinstate the briefing schedule as follows.

¹LVMPD's opposed May 30 motion to exceed the page limit in responding to the Review-Journal parties' emergency motion to extend injunction is granted, NRAP 27(d)(2); the 30-page response filed on May 31 is thus deemed properly filed, and the Review-Journal parties' June 2 opposed motion to strike the response is denied. LVMPD's June 23 motion to extend the time to file a response to the stay motion is granted, NRAP 27(a)(3)(A); we thus deem the response timely filed on July 7.

Procedural posture and briefing schedule

The district court's May 26 order dissolved the preliminary injunction that was initially appealed and cross-appealed in Docket No. 85553 and constitutes a decision on the merits that supersedes the denial of the second preliminary injunction appealed in Docket No. 85634. It appears from these rulings that the appeals and cross-appeal from the two preliminary injunction orders are moot. *See generally Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 314 (1999) ("Generally, an appeal from the grant of a preliminary injunction becomes moot when the trial court enters a permanent injunction, because the former merges into the latter."); *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) ("[C]ases presenting live controversies at the time of their inception may become moot by the occurrence of subsequent events."). Therefore, we dismiss the appeal by the State, Robert Telles, and LVMPD and the cross-appeal by the Review-Journal parties challenging the preliminary injunction in Docket No. 85553, as well as the Review-Journal parties' appeal from the order denying a second preliminary injunction in Docket No. 85634.

With respect to the remaining matter, the Review-Journal parties' appeal from the May 26 protocol order, we direct the clerk of this court to realign the docket so that the Review-Journal parties are designated as the appellants and the State, Telles, and LVMPD are designated as the respondents.² Given the upcoming trial date, we conclude

²We note that one of the initial Review-Journal parties, Rhonda Prast, did not join in the amended notice of appeal, and the parties explain that she is no longer with the Review-Journal. Since the proceedings to which

that expedited briefing is warranted. The parties filed transcript request forms/certificates of no transcript request on January 19 and 20, 2023. Appellants shall have 7 days from the date of this order to file and serve any transcript request form requesting additional transcripts related to the proceedings on limited remand. If no additional transcripts are to be requested, appellants shall file and serve a certificate to that effect within the same time period. See NRAP 9(a). Further, appellants shall have 14 days from the date of this order to file and serve the opening brief and appendix. Thereafter, respondents shall have 14 days from the date that the opening brief is served to file and serve answering briefs; if any respondent does not oppose the issues raised in appellants' opening brief, that respondent shall file a notice of nonopposition within the same timeframe. Appellants shall have 7 days from when the last answer is served to file and serve any reply brief. No extensions of time will be granted absent extraordinary and compelling circumstances demonstrated by written order, and we shall expedite the resolution of this matter to the extent our docket allows.

Pending motions

Appellants have moved for a stay of the district court's May 26 order pending appeal, explaining that the purpose of their appeal will be defeated if the protocol that they challenge is implemented during the pendency of this appeal and that they face irreparable harm in the form of disclosure of their privileged information to an allegedly unsuitable search team. LVMPD opposes a stay, contesting the asserted harm to appellants, raising issues of irreparable harm to respondents stemming from delayed

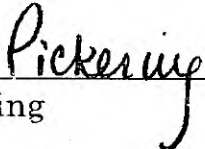
she was a party have been dismissed, the clerk shall remove Prast as an appellant in this matter.

investigation and trial and the interests of the public, and asserting that appellants are unlikely to succeed on appeal.

Having reviewed the parties' arguments in light of the NRAP 8 factors and given our decision to expedite this appeal, we conclude that the factors on balance weigh in favor of a stay. *See Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 658-59, 6 P.3d 982, 987 (2000) (recognizing that, in lieu of demonstrating a likelihood of success on the merits, a movant may present a substantial case regarding the merits of an appeal involving a serious legal issue and demonstrate that balancing the equities weighs heavily in favor of a stay). Accordingly, we grant appellants' June 2 motion for stay and hereby stay implementation of the search protocol portion of the district court's May 26 order, insofar as it pertains to the six seized devices identified in the district court's order, pending further order of this court. As appellants have not demonstrated that any additional newsgathering materials have been located and are subject to search, we deny appellants' May 26 emergency motion to extend the preliminary injunction we imposed in Docket No. 85634.

It is so ORDERED.


_____, J.
Cadish


_____, J.
Pickering


_____, Sr. J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Hon. Susan Johnson, District Judge
Ballard Spahr LLP/Denver
Ballard Spahr LLP/Las Vegas
Chesnoff & Schonfeld
Clark County District Attorney
Marquis Aurbach Chtd.
Liesl K. Freedman
Matthew J. Christian
Robert Telles
Ballard Spahr LLP/Phoenix
Eighth District Court Clerk