

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. 54358

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; PEGGY
TAGLE, RN; ELADIO CARRERA, M.D.; KEITH
MATHAHS, CRNA; HARI OM LIMITED
PARTNERSHIP; SAI K LLC; AND NICOLAE
WEISZ, M.D,

Appellants,

vs.

NGUYEN HUYNH AND THUY N. HUYNH,
Respondents.

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

No. 54361

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; LINDA
MCGREEVY, RN; PEGGY TAGLE, RN; ELADIO
CARRERA, M.D.; KEITH MATHAHS, CRNA;
HARI OM LIMITED PARTNERSHIP; AND SAI K
LLC,

Appellants,

vs.

GWENDOLYN MARTIN AND LOVEY MARTIN,
Respondents.

FILED

DEC 10 2010

TRACIE K. LINDERMAN
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

**ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; PEGGY
TAGLE, RN; HARI OM LIMITED PARTNERSHIP;
SAI K LLC; AND VISHVINDER SHARMA, M.D.,
Appellants,**

vs.

**KENNETH J. NOGLE,
Respondent.**

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

No. 54369

**ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN;
ELADIO CARRERA, M.D.; LINDA HUBBARD,
CRNA; HARI OM LIMITED PARTNERSHIP; AND
SAI K LLC,
Appellants,**

vs.

**SHARON ROYLANCE,
Respondents.**

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

No. 54370

**ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; JANINE
DRURY, RN; LINDA HUBBARD, CRNA;
RANADEV MUKHERJEE, M.D.; HARI OM
LIMITED PARTNERSHIP; AND SAI K LLC,
Appellants,**

vs.

**JULIE MENARD,
Respondent.**

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

No. 54371

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; KAREN
RICHVALSKY, RN; ELADIO CARRERA, M.D.;
SANJAY NAYYAR, M.D.; HARI OM LIMITED
PARTNERSHIP; AND SAI K LLC,

Appellants,

vs.

CAROLE GRUESKIN,

Respondent.

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

No. 54372

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JANINE DRURY, RN; AND
DEPAK K. DESAI, M.D.,

Appellants,

vs.

MICHAEL WASHINGTON AND JOSEPHINE
WASHINGTON,

Respondents.

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

No. 54379

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; DIPAK
K. DESAI, M.D.; 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. 54382

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; LINDA
MCGREEVY, RN; DIPAK K. DESAI, M.D.; HARI
OM LIMITED PARTNERSHIP; AND SAI K LLC,
Appellants,

vs.

STACY HUTCHINSON,
Respondents.

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

No. 54584

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; AND ELADIO CARRERA, M.D.
Appellants,

vs.

PATTY ASPINWALL AND WAVE ASPINWALL,
Respondents.

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

No. 54586

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; LINDA
MCGREEVY, RN; PEGGY TAGLE, RN; KEITH
MATHAHS, CRNA; DIPAK DESAI, M.D.; HARI
OM LIMITED PARTNERSHIP; AND SAI K LLC,
Appellants,

vs.

RODOLFO MEANA AND LINDA MEANA,
Respondents.

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

No. 54587

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; PEGGY
TAGLE, RN; KEITH MATHAHS, CRNA; ELADIO
CARRERA, M.D.; HARI OM LIMITED
PARTNERSHIP; AND SAI K LLC,

Appellants,

vs.

SONIA ORELLANA-RIVERA AND SAMUEL
ALFARO-MARTINEZ,

Respondents.

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

No. 54589

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; AND JANINE DRURY, RN,

Appellants,

vs.

JAMES WILLIAMS AND HEIDI HAMILTON,

Respondents.

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

No. 54591

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; AND
LINDA HUBBARD, CRNA,

Appellants,

vs.

MARIA V. PAGAN,

Respondent.

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

No. 54594

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; JANINE
DRURY, RN; VINCENT MIONE, CRNA; HARI OM
LIMITED PARTNERSHIP; AND SAI K LLC,

Appellants,

vs.

RANDY L. VALIMONT AND VICTORIA
VALIMONT,

Respondents.

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

No. 54595

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; LINDA
MCGREEVY, RN; LINDA HUBBARD, CRNA;
HARI OM LIMITED PARTNERSHIP; AND SAI K
LLC

Appellants,

vs.

BARBARA SUDMAN,

Respondent.

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

No. 54596

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; LINDA
HUBBARD, CRNA; HARI OM LIMITED
PARTNERSHIP; AND SAI K LLC,

Appellants,

vs.

DOLORES J. CAPPETTO,

Respondent.

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

No. 54597

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; GASTROENTEROLOGY CENTER
OF NEVADA, LLP; JEFF KRUEGER, RN; HARI
OM LIMITED PARTNERSHIP; AND SAI K LLC,
Appellants,

vs.

DIANNA JEAN BONNER,
Respondent.

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

No. 54600

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; AND JANINE DRURY, RN,
Appellants,

vs.

JOAN ALLEN AND KENNETH G. ALLEN,
Respondents.

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

No. 54601

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; JEFF KRUEGER, RN; AND
VINCENT MIONE, CRNA,

Appellants,

vs.

JUNE DOWNING,
Respondent.

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

No. 54604

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, LLC; AND KEITH MATHAHS,
CRNA,
Appellants,
vs.
BARBARA MORGAN,
Respondent.

ORDER RESOLVING MOTIONS REGARDING COUNSEL
FOR CERTAIN APPELLANTS, DISMISSING APPEALS AS TO
CERTAIN PARTIES, AND DIRECTING FURTHER STATUS REPORTS

These are appeals from a district court order denying a motion to change the place of trial. The appeals have been coordinated, through the master case pending in Docket No. 54351, but are not consolidated. This order resolves a number of outstanding matters on this court's docket.

Counsel for the Endoscopy Center appellants

The law firm of Lewis Brisbois Bisgaard & Smith's unopposed motion to withdraw as counsel of record for appellants Endoscopy Center of Southern Nevada, LLC, and Gastroenterology Center of Nevada, LLP, (the Endoscopy Centers) is granted.¹ SCR 46. After the motion was filed, the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, filed a notice of appearance on behalf of the Endoscopy Center appellants. No

¹Although the motion also purports to seek withdrawal as to Desert Shadow Endoscopy Center, LLC, this entity is not an appellant in any of these coordinated appeals, and, as a result, the motion is denied as moot to the extent relief is sought with regard to Desert Shadow.

certificate of service was filed for this document, however, and the Endoscopy Centers failed to respond to this court's October 8, 2010, notice to provide proof of service regarding the notice of appearance. Accordingly, the Endoscopy Centers shall have 10 days from the date of this order to file the required certificate of service.

SAI K, LLC

Based on the final decree entered in appellant SAI K, LLC's bankruptcy proceeding, the automatic stay applicable to actions against the debtor, see 11 U.S.C. § 362(a) (2006); Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424, 1426 (9th Cir. 1987), no longer applies to the appeals pending in Docket Nos. 54351, 54358, 54361, 54362, 54369, 54370, 54371, 54382, 54586, 54587, 54594, 54595, 54596, and 54597 with regard to appellant SAI K.

The law firm of Lionel Sawyer & Collins' unopposed motion to withdraw as counsel of record for SAI K is granted. SCR 46. SAI K shall have 20 days from the date of this order to retain new counsel² and cause counsel to enter an appearance in this court. We caution SAI K that, because a corporation may not appear in proper person or be represented by a nonattorney, Salman v. Newell, 110 Nev. 1333, 885 P.2d 607 (1994), if counsel fails to enter an appearance on its behalf, its appeals will be dismissed.

²According to the motion to withdraw, attorney Bruce T. Beesley of Lewis & Roca, LLP is the attorney responsible for SAI K's bankruptcy and Kusum Desai is the designated manager for SAI K. The clerk of this court is therefore directed to add Mr. Beesley and Kusum Desai to the carbon copy list for these coordinated cases, for notice purposes only.

Parties whose appeals remain subject to bankruptcy stays

Based on documents filed in these coordinated cases, including the most recent status reports filed by the parties, the majority of the appeals brought by the Endoscopy Centers, as well as all appeals brought by appellants Depak K. Desai, M.D., and Hari Om Limited Partnership, remain stayed pursuant to bankruptcy law, which operates to stay, automatically, the “continuation” of any “judicial . . . action . . . against the [bankruptcy] debtor.” 11 U.S.C. § 362(a)(1). 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, 817 F.2d 1424.

Because of the automatic stays in effect as to these parties, these appeals, which were docketed in this court in August 2009, have languished on this court’s docket. Accordingly, we conclude that judicial efficiency will be best served if the appeals brought by parties for whom the automatic bankruptcy stays remain in place are dismissed without prejudice to these parties’ rights to move to reinstate their appeals upon the conclusion of the bankruptcy proceedings or the lifting of the bankruptcy stays. Because a dismissal without prejudice will not require this court to reach the merits of the dismissed appeals and is not inconsistent with the primary purposes of the bankruptcy stays—to provide protection for debtors and creditors—we further conclude that such dismissals will not violate the bankruptcy stays. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (holding that a post-bankruptcy dismissal will violate the automatic stay “where 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) (holding that the automatic 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 following appeals are dismissed, without prejudice to the parties' right to move for reinstatement of the appeals upon either the lifting of the bankruptcy stays or final resolution of the bankruptcy proceedings:

Endoscopy Centers

The appeals of the Endoscopy Center of Southern Nevada, LLC, and Gastroenterology Center of Nevada, LLP, in Docket Nos. 54358, 54362, 54369, 54370, 54371, 54379, 54382, 54584, 54586, 54587, 54589, 54591, 54594, 54595, 54596, 54597, 54600, 54601, and 54604.³

Depak K. Desai, M.D.

The appeals of Depak K. Desai, M.D., in Docket Nos. 54372, 54379, 54382, and 54586.

³Because the Endoscopy Centers' appeals in Docket Nos. 54361 and 54372 are no longer subject to the automatic bankruptcy stay, those appeals shall remain pending in this court.

Additionally, the Endoscopy Centers' status report was also submitted on behalf of appellant Desert Shadow Endoscopy Center, LLC. As previously noted, however, this entity is not designated as an appellant in any of these appeals, although it was an appellant in Docket No. 54590, which was part of these coordinated appeals until it was dismissed. To the extent that Desert Shadow was intended to be an appellant in any appeal still subject to the stay stemming from Desert Shadow's bankruptcy and was properly designated as such in a timely filed notice of appeal, its appeals are dismissed, without prejudice, for the same reason we dismiss the Endoscopy Centers' appeals. If Desert Shadow is intended to be an appellant in Docket Nos. 54361 or 54372, it shall so inform this court within ten days of this order's date and demonstrate that it filed a timely notice of appeal in either or both of those cases.

Hari Om Limited Partnership

The appeals of Hari Om Limited Partnership⁴ in Docket Nos. 54358, 54361, 54362, 54369, 54370, 54371, 54382, 54586, 54587, 54594, 54595, 54596, and 54597.

Additionally, we vacate the stays imposed on the remaining appeals by this court's February 5, 2010, and May 13, 2010, orders. Nonetheless, for the reasons set forth below, the briefing schedule for these appeals shall remain suspended pending further order of this court.

Mootness

This court previously entered an order directing status reports from the appellants in these coordinated appeals on several different issues, including whether any and all claims, counterclaims, and cross-claims against them had been dismissed below, thereby rendering their appeals moot. See University of Nevada v. Tarkanian, 95 Nev. 389, 394, 594 P.2d 1159, 1162 (1979) (stating that the duty of this court is to resolve actual controversies and not to opine on moot questions or abstract propositions). Our status report order cautioned appellants that their failure to timely respond to that order could result in the dismissal of their appeals. In light of the responses filed in this court and the failure of certain appellants to respond as directed, the following appeals are dismissed as to the appellants set forth below.

⁴The law firm of Lionel Sawyer & Collins' unopposed motion to withdraw as counsel of record for appellant Hari Om Limited Partnership is granted. SCR 46.

Docket No. 54358

The appeals filed by Jeff Krueger, RN, Peggy Tagle, RN, Keith Mathahs, CRNA, and Nicolae Weisz, M.D., are dismissed based on the status reports filed by those parties. Additionally, the appeal filed by Eladio Carrera, M.D., is dismissed based on his failure to file a status report.

Docket No. 54361

The appeals filed by Jeff Krueger, RN, Linda McGreevy, RN, Peggy Tagle, RN, and Keith Mathahs, CRNA, are dismissed based on the status reports filed by those parties.⁵ The appeal filed by Eladio Carrera, M.D., is dismissed based on his failure to file a status report.

Docket No. 54362

The appeal filed by Vishvinder Sharma, M.D., is dismissed based on Sharma's failure to file a status report.

Docket No. 54369

The appeal filed by Eladio Carrera, M.D., is dismissed based on his failure to file a status report.

Docket No. 54370

The appeal filed by Ranadev Mukherjee, M.D., is dismissed based on Mukherjee's failure to file a status report.

⁵Although the status reports also indicated that Lisa Franks' appeal pending in Docket No. 54361 could be dismissed, Franks is not listed as a party to Docket No. 54361. To the extent that Lisa Franks was intended to be an appellant in that matter, however, her appeal is nonetheless dismissed based on her status report.

Docket No. 54371

The appeals filed by Jeff Krueger, RN, and Karen Richvalsky, RN, are dismissed based on the status reports filed by those parties. The appeal filed by Eladio Carrera, M.D., is dismissed based on his failure to file a status report.

Docket No. 54382

The appeals filed by Jeff Krueger, RN, and Linda McGreevy, RN, are dismissed based on the status reports filed by those parties.⁶

Docket No. 54584

The appeal filed by Eladio Carrera, M.D., is dismissed based on his failure to file a status report. As we have dismissed, without prejudice, the appeals brought by the Endoscopy Centers in this appeal, this appeal is now dismissed in its entirety.

Docket No. 54586

The appeals filed by Jeff Krueger, RN, Linda McGreevy, RN, Peggy Tagle, RN, and Keith Mathahs, CRNA, are dismissed based on the status reports filed by those parties.

Docket No. 54587

The appeal filed by Eladio Carrera, M.D., is dismissed based on his failure to file a status report.

⁶Although the status reports also indicated that Lisa Franks' appeal pending in Docket No. 54382 could be dismissed, Franks is not listed as a party to Docket No. 54382. To the extent that Lisa Franks was intended to be an appellant, however, her appeal is nonetheless dismissed based on her status report.

Additional Status Report

Based on the documents before us, it appears that certain of the remaining appellants may have had all claims, counterclaims, and cross-claims against them dismissed, resulting in their removal as defendants in the underlying actions since the filing of their previous status reports. Any appeal from the district court's venue determination brought by a party who has since been dismissed from the district court proceedings from which the appeal originated appears to be moot. See Tarkanian, 95 Nev. at 394, 594 P.2d at 1162.

Accordingly, each remaining appellant shall have ten days from the date of this order to file and serve a report regarding the status of the underlying actions against them. Any appellants who have been dismissed from any of the underlying actions shall inform this court as to that fact and show cause why their appeals should not be dismissed as moot. Those appellants who are defendants in more than one district court action and have thus filed multiple appeals from the district court's venue determination shall address the status of each district court action pending against them in which they have filed an appeal from the venue order. We caution appellants that their failure to timely respond to this order may result in the dismissal of their appeals. Respondents shall have five days from the date that any appellant's response is served to file and serve any reply.

All remaining parties

We remind the parties that, as set forth in this court's August 21, 2009, order, all documents submitted with regard to any of these coordinated appeals should be filed under both the docket number pertaining to that appeal and the master case for these coordinated

appeals, Docket No. 54351. Additionally, all parties should carefully review the caption for each of the coordinated appeals and ensure that all appellants and respondents are accurately designated on the captions for these cases. To the extent that any errors or omissions exist, the parties shall so inform this court within ten days of this order's date so that the captions can be corrected.

It is so ORDERED.⁷

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

⁷We defer ruling on all other motions pending in these coordinated appeals.

cc: Alverson Taylor Mortensen & Sanders
Ballard Spahr Andrews & Ingersoll, LLP
Bonne, Bridges, Mueller, O'Keefe & Nichols
Buckley King
Gittler & Bradford
Hutchison & Steffen, LLC
Lewis Brisbois Bisgaard & Smith, LLP
Lionel Sawyer & Collins/Las Vegas
MacDonald Devin, PC/Dallas
Schuering Zimmerman Scully Tweedy & Doyle LLP
Michael J. Shannon
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Wright Stanish & Winckler
Craig P. Kenny & Associates
Edward M. Bernstein & Associates/Las Vegas
Gerald I. Gillock & Associates
Kemp, Jones & Coulthard, LLP
Mainor Eglet
SAI K, LLC
Kusum Desai
Lewis & Roca LLP/Reno