

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT H. CAPANNA, M.D.,
INDIVIDUALLY; AND CAPANNA'S
INTERNATIONAL NEUROSCIENCE
CONSULTANTS, INC., A NEVADA
DOMESTIC PROFESSIONAL
CORPORATION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JERRY A. WIESE, DISTRICT JUDGE,

Respondents,

and

SUSANNE MOORE, INDIVIDUALLY
AND AS SPECIAL ADMINISTRATOR
OF THE ESTATE OF DAVID
ANTHONY KIMBALL; AND JENNIFER
EILEEN KIMBALL,

Real Parties in Interest.

No. 66289

FILED

DEC 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ALBERT H. CAPANNA, M.D.,
INDIVIDUALLY; AND CAPANNA'S
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CONSULTANTS, INC., A NEVADA
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Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JERRY A. WIESE, DISTRICT JUDGE,

Respondents,

and

SUSANNE MOORE, INDIVIDUALLY
AND AS SPECIAL ADMINISTRATOR

No. 66602

OF THE ESTATE OF DAVID
ANTHONY KIMBALL; AND JENNIFER
EILEEN KIMBALL,
Real Parties in Interest.


ORDER RESOLVING WRIT PETITIONS

In Docket No. 66289, petitioners seek a writ of mandamus, challenging a district court order determining that NRS 41A.035 and NRS 42.021 are unconstitutional. In Docket No. 66602, petitioners seek a writ of mandamus, challenging a district court order denying a motion to dismiss based on statutes that were repealed when NRS 41A.035 and 42.021 were enacted. We previously consolidated these petitions and stayed all further proceedings in the underlying district court case. The real parties have filed answers to the petitions and petitioners have filed a reply and supplemental reply.


Our recent decision in *Tam v. Eighth Judicial District Court*, 131 Nev., Adv. Op. 80, ___ P.3d ___ (2015), resolves the issues presented in Docket No. 66289 regarding NRS 41A.035. In particular, we held in *Tam* that NRS 41A.035 is constitutional, applies to medical malpractice actions, and applies per incident regardless of how many plaintiffs, defendants, or claims are involved. Based on *Tam*, we grant the petition in Docket No. 66289 in part. However, we conclude that an appeal presents an adequate remedy at law to address the district court's decision regarding NRS 42.021. We therefore deny the petition in Docket No. 66289 to that extent. See NRS 34.170; *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Given our resolution of the petition in Docket No. 66289, we conclude that the issues addressed in the petition in Docket No. 66602 are moot. We therefore deny that petition.

For the reasons set forth above, we direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order as to NRS 41A.035. The petitions are denied in all other respects. We further lift the stay previously imposed by this court.

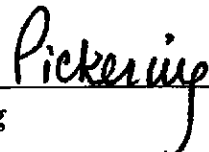
It is so ORDERED.


_____, J.

Saitta


_____, J.

Gibbons


_____, J.

Pickering

cc: Hon. Jerry A. Wiese, District Judge
Lauria Tokunaga Gates & Linn, LLP/Las Vegas
James R. Christensen
Law Office of William R. Brenske
Eighth District Court Clerk