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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JSB, a minor, by his parents and natural guardians MARINA DIAZ and JOSE DIAZ,

3:14-cv-0436-LRH-WGC

Plaintiff,

ORDER

v.

CARSON CITY DEPUTY SHERIFF HARRY W. WHEELER,

Defendant.

Before the court is plaintiff JSB’s motion to lift stay. ECF No. 30. Defendant Carson City Deputy Sheriff Harry W. Wheeler (“Deputy Wheeler”) filed an opposition (ECF No. 31) to which JSB replied (ECF No. 32).

On August 19, 2014, JSB, a minor, by and through his parents and natural guardians Marina Diaz and Jose Diaz, filed the underlying complaint against Deputy Wheeler alleging two causes of action related to an altercation that took place on May 20, 2014: (1) a Section 1983 claim for excessive force; and (2) common law assault and battery. ECF No. 1.

While this action was pending, juvenile proceedings were commenced against JSB for Interference with a City or Sherriff’s Officer in violation of Carson City Municipal Code §8.04.050 related to the May 20, 2014 altercation. On October 14, 2014, after a fact-finding hearing, the Juvenile Court Master found that on May 20, 2014, JSB unlawfully hindered, obstructed, resisted, delayed and/or engaged in physical behavior

1 to prevent cooperation with law enforcement officers in violation of the municipal code.
2 JSP appealed that decision arguing that the master's finding was in error as JSB was
3 not allowed to present evidence that his interference with the officers was caused by,
4 and a direct result of, Deputy Wheeler's alleged use of excessive force.

5 A second fact-finding hearing was held on May 20, 2015, by a different Juvenile
6 Court Master during which JSB presented evidence of Deputy Wheeler's alleged
7 excessive force. On June 1, 2015, the new Juvenile Court Master issued a finding that
8 that JSB had violated Carson City Municipal Code §8.04.050 beyond a reasonable
9 doubt, and that Deputy Wheeler had not engaged in excessive force causing JSB's
10 conduct. JSB again appealed the special master's finding.

11 While JSB's appeal was pending, Deputy Wheeler filed a motion for summary
12 judgment in this action. ECF No. 16. After the motion for summary judgment was filed,
13 state court Judge James Wilson issued an order affirming the Juvenile Court Masters'
14 findings of fact that JSB had committed the offense of Interference with a City or
15 Sherriff's Officer as defined by Carson City Municipal Code §8.04.050. Subsequently,
16 on October 23, 2015, JSB filed an appeal of Judge Wilson's order to the Nevada
17 Supreme Court. In response, this court denied Deputy Wheeler's motion for summary
18 judgment without prejudice, stating that the court would allow Deputy Wheeler to re-file
19 the motion subsequent to the outcome of JSB's appeal. ECF No. 28. In that same order,
20 the court stayed this action pending JSB's appeal. *Id.*

21 On March 5, 2016, JSB filed a notice with the court indicating that the Nevada
22 Supreme Court had found Carson City Municipal Code §8.04.050 to be
23 unconstitutionally vague. ECF No. 29. The notice also stated that on March 3, 2016,
24 Judge Russell of the First Judicial District Court entered an order dismissing the charge
25 against JSB and vacating the Juvenile Masters' findings of fact. *Id.* Thereafter, JSB filed
26 the present motion to lift stay. ECF No. 30.

27 The court has reviewed the documents on file in this matter and finds that
28 because JSB's appeal to the Nevada Supreme Court has concluded, the stay entered

1 on November 24, 2015, should be lifted. Accordingly, the court shall grant JSB's motion
2 and lift the stay in this action. Similarly, in accordance with the court's prior order,
3 Deputy Wheeler is granted leave to file a renewed motion for summary judgment.

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5 IT IS THEREFORE ORDERED that plaintiff's motion to lift stay (ECF No. 30) is
6 GRANTED. The stay entered in this action, 3:14-cv-0436-LRH-WGC, is LIFTED,
7 effective immediately.

8 IT IS FURTHER ORDERED that defendant shall have twenty (20) days after
9 entry of this order to file a renewed motion for summary judgment, if any.

10 IT IS SO ORDERED.

11 DATED this 19th day of July, 2016.

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14 LARRY R. HICKS
15 UNITED STATES DISTRICT JUDGE

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