

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS RICHARD AND CAROL
RICHARD, D/B/A AZTECH
PLASTERING COMPANY,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
SALLY L. LOEHRER, DISTRICT
JUDGE,

Respondents,

and

JAMES R. OLSON AND CANDACE
COLLINS OLSON,
Real Parties in Interest.

No. 44602

FILED

MAR 04 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court's decision to allow the retrial of certain causes of action in a construction defect action. On May 12, 2004, a majority of the en banc court issued its opinion in Olson v. Richard,¹ holding that a plaintiff may pursue a negligence claim when suing under the construction defect statutes. Consequently, this court "reverse[d] and remand[ed] for further proceedings" because the district court had dismissed the real parties in interest's negligence claim.² But absolutely nowhere in the opinion does this court suggest that the jury's defense verdict on the real parties in


¹120 Nev. 240, 89 P.3d 31 (2004).

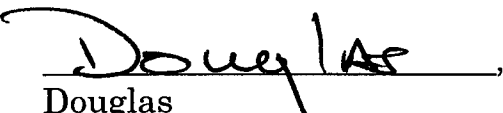
²Id. at 244, 89 P.3d at 33-34.

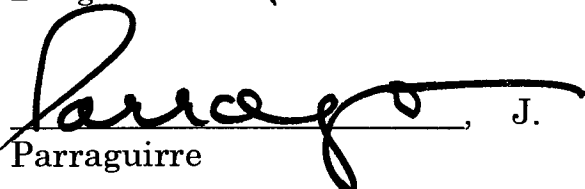
interest's other claims was in doubt. Indeed, this court specifically stated that "the district court did not abuse its discretion in denying the Olsons' motion for a new trial, since it is not evident that the jury reached its verdict solely on the basis of passion and prejudice."³

Therefore, we conclude that a writ of prohibition is necessary to confine the district court to its jurisdiction, so that it permits further proceedings only on the real parties in interest's negligence claim.⁴ Accordingly, the clerk of this court shall issue a writ of prohibition precluding the district court from allowing the retrial of any of the real parties in interest's claims other than negligence.

It is so ORDERED.⁵


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

³Id. at 244, 89 P.3d at 33.

⁴See NRS 34.320; 34.330; Cerminara v. District Court, 104 Nev. 663, 765 P.2d 182 (1988).

⁵In light of this order, we deny the motion for stay as moot, and we vacate our temporary stay entered on February 7, 2005.

cc: Hon. Sally L. Loehrer, District Judge
Brady, Vorwerck, Ryder & Caspino
Rawlings Olson Cannon Gormley & Desruisseaux
Clark County Clerk