

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT KORCAL, D.O.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DOUGLAS HERNDON, DISTRICT
JUDGE,

Respondents,

and

JEAN BEHRENS, INDIVIDUALLY,
AND AS EXECUTRIX OF THE ESTATE
OF EDWARD BEHRENS, DECEASED;
SCOTT BEHRENS, AN INDIVIDUAL;
MICHAEL BEHRENS, AN
INDIVIDUAL; AND DEBRA BEHRENS,
AN INDIVIDUAL,
Real Parties in Interest.

No. 47200

FILED

JUN 30 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR A
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order that denied petitioner's summary judgment motion. In his petition, Robert Korcal, D.O., requests that this court issue a writ directing the district court to vacate its order denying his summary judgment motion, enter summary judgment in his favor, and award him attorney fees, costs, and interest.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control an arbitrary or capricious exercise of discretion.¹ A writ of prohibition, on the other hand, is

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

available when a district court acts without or in excess of its jurisdiction.² But, neither writ will issue when petitioner has a plain, speedy, and adequate legal remedy.³ Accordingly, this court will not exercise its discretion⁴ to consider a writ petition challenging a district court order that denied a motion for summary judgment, unless petitioner demonstrates that no disputed factual issues exist and, pursuant to clear authority, the district court was obligated to enter summary judgment, or that considering the petition is necessary to clarify an important legal issue and would serve judicial economy interests.⁵

In this case, according to the district court and, as indicated by the medical expert depositions attached to the writ petition, factual issues concerning whether there was a departure from the accepted standard of medical care and causation remain disputed.⁶ Accordingly, because Dr. Korcal has an adequate legal remedy available in the form of an appeal from any adverse final judgment, and because he has not demonstrated

²See NRS 34.320.

³See NRS 34.170 and 34.330; Pan v. Dist Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (pointing out that this court has consistently held that an appeal is an adequate legal remedy, precluding writ relief).


⁴See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (stating that the issuance of a writ of mandamus or prohibition is purely discretionary with this court).


⁵See Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997).

⁶See Wood v. Safeway, Inc., 121 Nev. ___, 121 P.3d 1026 (2005); see also Van Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981) (recognizing that questions regarding negligence generally present factual questions for the jury to resolve).

that this matter fits within any exception to our general policy regarding consideration of writ petitions denying summary judgment,⁷ we

ORDER the petition DENIED.⁸


_____, C.J.
Rose


_____, J.
Becker


_____, Sr. J.
Shearing

cc: Hon. Douglas W. Herndon, District Judge
Linton & Associates, P.C.
Crockett & Myers
Clark County Clerk

⁷Smith, 113 Nev. at 1345, 950 P.2d at 281.

⁸See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under a general order of assignment entered January 6, 2006.