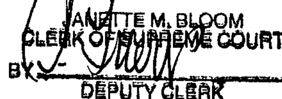
IN THE SUPREME COURT OF THE STATE OF NEVADA

MCCURDY TRUCKING AND DELORES MCCURDY, AN INDIVIDUAL,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE MICHELLE LEAVITT, DISTRICT JUDGE,
Respondents,
and
YELLOW CHECKER STAR CAB CO., A/K/A AND/OR D/B/A YELLOW CHECKER STAR TRANSPORTATION; NEVADA YELLOW CAB CORPORATION, A NEVADA CORPORATION; NEVADA CHECKER CAB CORP., A NEVADA CORPORATION; AND GEORGE JAMES BEAL, AN INDIVIDUAL,
Real Parties in Interest.

No. 47402



JUL 2 3 2007
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER GRANTING IN PART PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges, among other things, a district court partial summary judgment with regard to punitive damages, and a district court order striking the affidavit of real party in interest George James Beal and denying petitioners' motion to reconsider the partial summary judgment.

FACTS

McCurdy's district court complaint

In the underlying district court action, which arose from a vehicular accident, petitioners McCurdy Trucking and its owner Delores

07-15967

McCurdy (collectively McCurdy) filed a complaint against Beal and real party in interest Yellow Checker Star Cab Co. According to McCurdy's complaint, Beal, who was employed by Yellow Cab, while intoxicated and driving his assigned cab, crossed into another travel lane, where he was struck by McCurdy's semi-truck. McCurdy's complaint requests compensatory damages for property damage and related lost income and punitive damages. The punitive damages were requested from both Beal, under NRS 42.010, for injury resulting from Beal's operation of the cab after consuming alcohol, and Yellow Cab, under NRS 42.007, for Yellow Cab's conscious disregard of the rights or safety of others by knowingly allowing Beal to drive while intoxicated.[1]

Although Yellow Cab terminated Beal's employment after the accident, it nevertheless retained an attorney to represent Beal and Yellow Cab, who answered the complaint, generally denying the allegations and raising several affirmative defenses. After Beal failed to appear for a deposition, however, counsel for Yellow Cab and Beal moved to withdraw from representing him, indicating that he was not cooperating and could not be found. The court granted the motion. Subsequently, a default was entered against Beal.

Yellow Cab's partial summary judgment motion

Because the district court thereafter granted Yellow Cab's motion to exclude several witnesses and documents based on untimely disclosure, Yellow Cab moved for summary judgment on McCurdy's punitive damage request, arguing that McCurdy had no admissible

[1]See NRS 484.3795(1)(a).

evidence showing that Beal had consumed alcohol and was intoxicated while operating the cab.

McCurdy opposed the motion, and the district court allowed McCurdy additional time to supplement its opposition with admissible evidence, after which McCurdy provided the affidavit of trooper Mike Cooke. Trooper Cooke attested that he had responded to the accident and administered a field sobriety test to Beal. Based on Beal failing the field sobriety test, Cooke averred, he cited Beal for driving while under the influence of alcohol.

The district court determined that Cooke's affidavit was insufficient to successfully oppose Yellow Cab's partial summary judgment motion because it stated that Beal had failed the field sobriety test, not that he was intoxicated, as NRS 42.010 and NRS 42.007 require. The court then granted Yellow Cab summary judgment on McCurdy's punitive damages claim.

McCurdy seeks reconsideration of the partial summary judgment

In the meantime, according to McCurdy, it obtained an address for Beal and wrote to him, asking that he provide an affidavit regarding the case. McCurdy asserts that, on the same day when the summary judgment hearing was held, Beal contacted McCurdy by phone, agreeing to provide an affidavit. In his affidavit, Beal attested that he was acting within the scope of his employment and was legally intoxicated with a blood alcohol concentration of 1.2 when the accident occurred. Beal's affidavit further stated that, "pursuant to NRS . . . 484.3795, [he] operated a motor vehicle after willfully consuming or using alcohol, however, [he] did not knowingly drive intoxicated."

Based on Beal's affidavit, McCurdy filed a motion asking the district court to reconsider its partial summary judgment.[2] Yellow Cab opposed the motion, and during the hearing, the court raised issues concerning the propriety of Beal's affidavit. The court questioned whether it was appropriate for McCurdy to contact Beal, who was unrepresented, and obtain an affidavit from him, given that he was a defaulted party in the case and his affidavit had the potential to "bind" Yellow Cab.

The district court denies reconsideration and strikes Beal's affidavit

The court reasoned that, even though Beal was Yellow Cab's former employee and his position as a cabdriver was not managerial, Beal still had the ability to "bind" Yellow Cab to punitive damages liability with his affidavit and, thus, McCurdy's contact with Beal was improper under RPC 4.2[3] and Cronin v. District Court.[4] Explaining that it was also

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[2]Under EDCR 2.24(a), no motions once heard and disposed of may be reheard, unless by leave of the court. Although McCurdy failed to seek the court's consent to rehear the partial summary judgment motion before filing its motion for reconsideration, the district court nevertheless reheard the partial summary judgment in light of McCurdy's new evidence. See Masonry and Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (noting that a district court may reconsider a previously decided issue if substantially different evidence is introduced to support a contrary ruling).

[3]The rules governing professional conduct were substantially revised in May 2006, and the new rules apply to this matter. The district court based the challenged decision on former SCR 182, but the rule's substance was not changed. Other than renumbering, no change was made to that rule, see RPC 4.2, so our analysis is not affected.

[4]105 Nev. 635, 781 P.2d 1150 (1989), overruled on other grounds by Nevada Yellow Cab Corp. v. Dist. Ct., 123 Nev. __, 152 P.3d 737 (2007).

concerned that McCurdy had induced Beal to provide the affidavit by promising not to pursue a default judgment against him, the court noted that it was considering disqualifying McCurdy's counsel. The court then entered an order striking Beal's affidavit and denying, without prejudice, McCurdy's motion for reconsideration.

The district court considers whether McCurdy should be sanctioned for contacting Beal

After denying McCurdy's motion to reconsider the partial summary judgment, the court scheduled a status check for the following week, ordered McCurdy's counsel to produce, under seal, any notes related to his conversations with Beal, and directed McCurdy's counsel to refrain from further contact with Beal.

McCurdy filed a reply arguing that any contact it had made with Beal was appropriate under Palmer v. Pioneer Inn Associates, Ltd.[5] because Beal, as a cabdriver, did not have the authority to speak for and bind Yellow Cab. McCurdy also objected to the court's order directing it to produce work product and to any potential disqualification of counsel.

At the status hearing, the court indicated that Beal had speaking agent authority as to this incident. Concluding that McCurdy's contact with Beal was improper, the court, in addition to striking Beal's affidavit, indicated that Beal likely would be excluded as a witness. McCurdy requested an evidentiary hearing regarding Beal's exclusion, and the court directed Yellow Cab to obtain independent counsel for Beal. The court also indicated that it would further explore whether McCurdy's

[5]118 Nev. 943, 59 P.3d 1237 (2002).

contact with Beal was so extensive or improper that McCurdy's counsel should be disqualified.

McCurdy's petition to this court for extraordinary relief

After the district court scheduled a hearing to determine whether Beal should be excluded as a witness and whether to sanction McCurdy beyond striking Beal's affidavit, but before that hearing took place, McCurdy filed this petition for a writ of mandamus or prohibition, challenging the (1) partial summary judgment, (2) the district court's order striking Beal's affidavit and denying McCurdy's motion to reconsider the partial summary judgment on punitive damages, and (3) the district court's rulings directing McCurdy to provide any notes or documents related to taking Beal's affidavit, scheduling a hearing to determine whether sanctions beyond striking the affidavit should apply, and directing McCurdy's counsel to have no further contact with Beal. On McCurdy's motion, this court stayed the underlying district court matter, pending receipt and consideration of any opposition to the stay, which was not filed. Yellow Cab timely filed an answer to McCurdy's writ petition, as directed. McCurdy, with this court's permission, has filed a reply.

DISCUSSION

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, or manifest abuse of, discretion.[6] This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its

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

judicial functions, when such proceedings are in excess of the district court's jurisdiction.[7] Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if a petition will be considered.[8] McCurdy bears the burden of demonstrating that extraordinary relief is warranted.[9] Because McCurdy does not appear to argue that the challenged proceedings and decisions were extra-jurisdictional, but rather it seeks to control the district court's actions after an alleged manifest abuse of discretion, this petition is more appropriately considered under mandamus standards.

The district court's partial summary judgment with regard to McCurdy's punitive damages request based on Trooper Cooke's affidavit

McCurdy asserts that Trooper Cooke's affidavit, in which Cooke attested that he had arrested Beal for driving under the influence of alcohol after Cooke administered a field sobriety test to Beal and Beal failed, was sufficient, under Wood v. Safeway, Inc.,[10] to withstand Yellow Cab's partial summary judgment on punitive damages.

Yellow Cab answers that the district court properly granted summary judgment on the punitive damages request because McCurdy presented no admissible evidence to demonstrate that Beal had violated

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[7]See NRS 34.320.

[8]See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

[9]Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

[10]121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

NRS 484.3795, which would allow it to pursue a punitive damages award under NRS 42.010 and NRS 42.007.

Summary judgment is appropriate when the pleadings and affidavits that are properly before the court, when viewed in the light most favorable to the non-moving party, demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.[11] In opposing summary judgment, the nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of genuine issues for trial.[12] A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.[13]

McCurdy's punitive damage request rests on NRS 42.010 and 42.007. In particular, McCurdy seeks punitive damages against Beal under NRS 42.010, which provides that, in an action for breach of an obligation, a plaintiff may recover punitive damages if "the defendant caused an injury by the operation of a motor vehicle in violation of . . . NRS 484.3795[14] . . . after willfully consuming or using alcohol or another

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[11]Id.

[12]Id. at 732, 121 P.3d at 1031.

[13]Id. at 731, 121 P.3d at 1031.

[14]A violation of NRS 484.3795 occurs when a person, while under the influence of intoxicating liquor with a 0.08 or more concentration of alcohol in his blood or breath, does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways, if the act or neglect of duty proximately causes substantial bodily harm to a person other than himself.

substance, knowing that he would thereafter operate the motor vehicle." Asserting that Yellow Cab had advance knowledge that Beal was intoxicated when it allowed Beal to operate its cab, McCurdy also seeks punitive damages against Yellow Cab, under NRS 42.007(1), which provides that a plaintiff may recover punitive damages from an employer for the "wrongful act of [its] employee," if the employer (a) "had advance knowledge that the employee was unfit for the purposes of the employment and employed him with a conscious disregard of the rights or safety of others," (b) "expressly authorized or ratified the wrongful act of the employee for which the damages are awarded," or (c) "is personally guilty of oppression, fraud or malice, express or implied."

Here, the district court granted Yellow Cab's partial summary judgment motion after finding that Trooper Cooke's affidavit was insufficient to successfully oppose the motion because it merely stated that Beal had failed the field sobriety test, not that he was under the influence of alcohol or had a 0.08 or more concentration of alcohol in his blood or breath, as NRS 42.010 requires by way of incorporating NRS 484.3795, and as NRS 42.007 implies by holding an employer responsible for an employee's "wrongful act," which, in this case, McCurdy contends was driving while intoxicated. Because Trooper Cooke did not attest that he had administered a breathalyzer test or had any knowledge regarding the concentration of alcohol in Beal's blood or breath, we conclude that the district court did not act arbitrarily or capriciously in granting Yellow Cab's partial summary judgment motion based on lack of admissible

evidence supporting a genuine issue of fact as to whether McCurdy was entitled to recover punitive damages.[15]

Accordingly, we are not satisfied that this court's intervention by way of extraordinary relief is warranted with regard to McCurdy's request for a mandate directing the district court to vacate its partial summary judgment based on Trooper Cooke's affidavit. Accordingly, we deny the petition with respect to that issue.[16]

The district court's order striking Beal's affidavit and denying reconsideration of its partial summary judgment on the punitive damages request based on Beal's affidavit

In its writ petition, McCurdy maintains that no legal basis supported striking Beal's affidavit, since Beal was unrepresented by counsel when he provided the affidavit. McCurdy asserts that the district court's reliance on Cronin was misplaced, since Palmer clarified Cronin and, at any rate, Cronin is distinguishable from the present case because, here, Beal is a party to the case and he is a former employee. McCurdy argues that, because Beal was never a managerial employee, he had no authority to bind Yellow Cab as contemplated by Palmer, and thus, the district court erred by striking Beal's affidavit on the ground that it was obtained through improper ex parte contact.

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[15]See NRCP 56(e) (providing that opposing affidavits must be made on personal knowledge and set forth such facts as would admissible in evidence); Coblentz v. Union Welfare Fund, 112 Nev. 1161, 1172, 925 P.2d 496, 502 (1996) (noting that an affidavit setting forth "beliefs" was not sufficient to defeat a properly supported motion for summary judgment).

[16]Smith, 107 Nev. at 677, 818 P.2d at 851.

Yellow Cab answers that the court properly struck Beal's affidavit, because Beal could bind Yellow Cab with his statements and because McCurdy induced Beal to provide the affidavit by agreeing not to pursue a default judgment against him. Yellow Cab argues that Palmer is inapplicable here because Palmer was decided in the context of a pre-litigation investigation under NRCP 11. Yellow Cab asserts that Cronin applies in this case, and under Cronin's interpretation of former SCR 182, now RPC 4.2, contact with an employee whose act in connection with the matter may be imputed to the organization for purposes of civil liability or whose statement may constitute an admission on behalf of the organization is prohibited.

RPC 4.2 generally prohibits communication with a party represented by counsel

In this case, the district court struck Beal's affidavit after determining that it would be prejudicial to Yellow Cab and finding that McCurdy's attorney obtained the affidavit in violation of RPC 4.2. RPC 4.2 provides

> [i]n representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.

Here, Beal was not represented by counsel at the time when McCurdy contacted him and thus, RPC 4.2 general provision prohibiting contact does not apply. Nevertheless, this court, under certain circumstances, has extended RPC 4.2's application to prohibit contact with employees of represented corporations.

In cases involving corporations, RPC 4.2 prohibits the opposing party from communicating with certain corporation employees

In applying RPC 4.2 to litigation when one of the parties is a corporation, the lawyer representing the opposing party is prohibited from communicating with any of the corporation's employees who have the authority to speak for the corporation.[17] This court, in Cronin[18] and Palmer,[19] addressed who may be deemed to have authority to speak on a corporation's behalf, and thus be deemed a "party" with whom the other party's attorney may not communicate. In Palmer, this court adopted the managing-speaking agent test, under which "party," for purposes of RPC 4.2, includes "'only those employees who have the legal authority to "bind" the corporation in a legal evidentiary sense, i.e., those employees who have "speaking authority" for the corporation.'"[20]

In adopting the managing-speaking agent test and thus defining RPC 4.2's scope, this court concluded that RPC 4.2's purpose "is to protect the attorney-client relationship" from intrusion by opposing counsel, and to promote effective representation, "not to protect an organization from the discovery of adverse facts."[21] Thus, "party," as

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[17]Palmer, 118 Nev. at 960, 59 P.3d at 1247-48 (interpreting the scope of former SCR 182's "no-contact" provision on certified questions from the United States Court of Appeals for the Ninth Circuit).

[18]105 Nev. 635, 781 P.2d 1150.

[19]118 Nev. 943, 59 P.3d 1237

[20]Id. at 960, 59 P.3d at 1247-48 (quoting Wright by Wright v. Group Health Hosp., 691 P.2d 564, 569 (Wash. 1984)).

[21]Id.

contemplated by RPC 4.2, does not include "employees whose conduct could be imputed to the organization based simply on the doctrine of respondeat superior."[22] In other words, "an employee does not 'speak for' the organization simply because his or her statement may be admissible as a party-opponent admission. Rather, the inquiry is whether the employee can bind the organization with his or her statement."[23]

RPC 4.2 does not prohibit an opposing party from communicating with a corporation's unrepresented former employees

In addition to explaining that RPC 4.2 applies to prohibit communication with those employees of a corporation who have the authority to speak on behalf of, and thus bind, the corporation, this court explained that "an employee for whom counsel has not been retained does not become a 'represented party' simply because his or her conduct may be imputed to the organization; while any confidential communications between such an employee and the organization's counsel would be protected by the attorney-client privilege, the facts within that employee's knowledge are generally not protected from revelation through ex parte interviews by opposing counsel."[24] Although Palmer was decided in a Rule 11, pre-litigation investigation context,[25] Palmer also contemplated ex

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[22]Id. at 960, 59 P.3d at 1248.

[23]Id. at 961, 59 P.3d at 1248.

[24]Id.

[25]The allegedly prohibited contact in Palmer was made during a matter pending before the Equal Employment Opportunity Commission. See id. at 946, 59 P.3d at 1239.

parte contact during discovery, explaining how one proposed test would affect "the rules of civil procedure, especially the discovery rules, [which] are designed to afford parties broad access to information."[26]

Although Yellow Cab relies on Cronin[27] to argue that McCurdy's communication with Beal was prohibited, Cronin is consistent with Palmer, because, in interpreting former SCR 182, Cronin concluded that managerial-level employees of a corporate client are included within the rule's prohibition against ex parte communications with a represented party. For its assertion that Cronin prohibits McCurdy's communication with Beal, Yellow Cab relies on Cronin's reference to the American Bar Association's Model Rules of Professional Conduct, Rule 4.2., comment 2, which provides in pertinent part:

> In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization.[28]

In Palmer, however, this court explained that, although Cronin cited to the comment, that comment was not adopted by the court, and, in fact this court had since rejected the "admission clause" portion of

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[26]Id. at 952, 59 P.3d at 1243.

[27]105 Nev. at 641, 781 P.2d 1153-54 (1989).

[28]Id. at 640, 781 P.2d at 1153.

the comment.[29] Moreover, Palmer clarified Cronin by specifically adopting the managing-speaking agent test as the test for determining whether a communication falls within former SCR 182's ambit.

We conclude that McCurdy did not violate RPC 4.2 by contacting Beal, an unrepresented former Yellow Cab driver who, as Yellow Cab concedes, never had any managerial duties or, under Palmer, the authority to speak on Yellow Cab's behalf.[30] McCurdy attempted to depose Beal while he was represented by Yellow Cab's attorney, and it was not until after the court granted Yellow Cab's attorney's motion to withdraw from representing Beal that McCurdy contacted Beal. Although Beal's affidavit statements may be damaging to Yellow Cab's defense, Beal's statements do not "bind" Yellow Cab in the manner contemplated by Palmer because Beal, as a cabdriver, did not have "'managing authority sufficient to give [him] the right to speak for, and bind,'" Yellow Cab.[31] Moreover, because Yellow Cab terminated Beal's employment immediately after the accident, RPC's 4.2's prohibition against ex parte communication with a represented party would not have applied here, regardless of what type of position Beal had with Yellow before being fired.[32]

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[29]Palmer, 118 Nev. at 959 n.57, 59 P.3d at 1247 n.57 (citing In re Discipline of Schaefer, 117 Nev. 496, 507-08, 25 P.3d 191, 199-200, as modified 31 P.3d 365 (2001)).

[30]Id. at 960-61, 59 P.3d at 1248.

[31]Id. at 961, 59 P.3d at 1248 (quoting Wright, 691 P.2d at 569).

[32]See id. (noting that employees should be considered "parties" for the purposes of RPC 4.2, if they have managing authority sufficient to give them the right to speak for, and bind, the corporation) (emphasis added); see also Wright, 691 P.2d at 569 (recognizing that, "[s]ince former

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The district court should determine whether it should grant reconsideration of the partial summary judgment in light of Beal's affidavit

Although we conclude that the district court improperly struck Beal's affidavit, we cannot conclude, as McCurdy requests, that Beal's affidavit requires the district court to grant McCurdy's motion for reconsideration. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous."[33] And in those "very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached," a motion for rehearing should be granted.[34]

As noted above, the district court's partial summary judgment is appropriate if no genuine issues of material fact remain with regard to McCurdy's punitive damages request.[35] Affidavits submitted in opposition to a summary judgment motion must set forth specific facts showing that there is a genuine issue for trial.[36] Such affidavits "must present admissible evidence, and must not only be made on the personal

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. . . continued

employees cannot possibly speak for the corporation, [RPC 4.2] does not apply to them.").

[33]Masonry and Tile, 113 Nev. at 741, 941 P.2d at 489 (citing Little Earth of United Tribes v. Dept. of Housing, 807 F.2d 1433, 1441 (8th Cir. 1986)).

[34]Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

[35]Wood, 121 Nev. at 731, 121 P.3d at 1031.

[36]See NRCP 56(c) and (e); Wood, 121 Nev. at 732, 121 P.3d at 1031.

knowledge of the affiant, but must show that the affiant possesses the knowledge asserted."[37] Thus, the affiant's "mere conclusions of law or restatements of allegations of the pleadings are not sufficient" to withstand summary judgment.[38] In light of these standards, the district court should determine whether Beal's affidavit, together with any other admissible evidence, is sufficient to withstand Yellow Cab's partial summary judgment motion.

CONCLUSION

By concluding that Beal's statements were binding on Yellow Cab's liability for the accident, the district court misconstrued Palmer's definition of "binding." Because we conclude that the district court manifestly abused its discretion by striking Beal's affidavit based on RPC 4.2, we grant the petition in part, and we direct the clerk of this court to issue a writ of mandamus compelling the district court to vacate its order striking Beal's affidavit,[39] and to determine whether Beal's affidavit,

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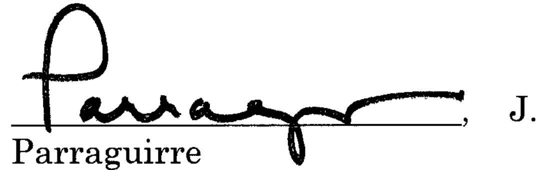
[37]Daugherty v. Wabash Life Ins. Co., 87 Nev. 32, 38, 482 P.2d 814, 818 (1971).

[38]Id.

[39]Yellow Cab's argument that Beal's affidavit was properly excluded on the basis that McCurdy induced Beal to provide the affidavit is unavailing. Any promise not to seek a money judgment would bear only upon the credibility of Beal's affidavit, not to its admissibility. Cf. Sheriff v. Acuna, 107 Nev. 664, 669-70, 819 P.2d 197, 200 (1991) (noting, in a criminal context, that testimony given in exchange for concessions or inducements is generally admissible, provided that the opposing party is allowed to cross-examine the witness and the jury is allowed to evaluate the testimony in light of any agreement).

together with any other admissible evidence, provides a sufficient basis to withstand Yellow Cab's partial summary judgment motion.[40]

It is so ORDERED.[41]



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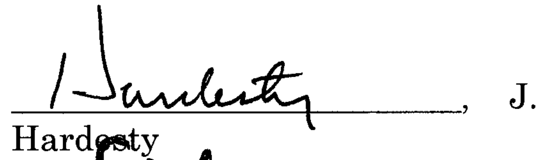
Parraguirre



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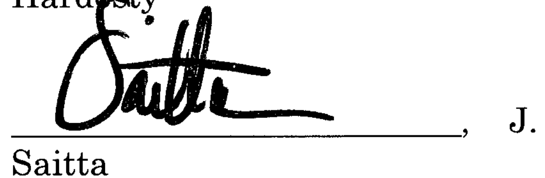
Hardesty



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[40]We are not persuaded by Yellow Cab's argument that procedural deficiencies with McCurdy's motion for reconsideration should preclude writ relief.

[41]Because we perceive no manifest abuse of discretion or extra-jurisdictional act with regard to the district court's order directing McCurdy to produce certain documents based on the court's concern that McCurdy might have violated RPC 4.2, any request for relief related to that order is denied. Also, in light of this order, any request for relief related to an evidentiary hearing on sanctions is denied as moot. Finally, Yellow Cab indicates that Beal is now represented by counsel, Kirby Wells, Esq., and, thus, any request for relief related to the order directing McCurdy to have no further contact with Beal is denied as moot.

In light of this order, we vacate the temporary stay, entered on June 5, 2006.

cc: Hon. Michelle Leavitt, District Judge
Harris Merritt Chapman, Ltd.
Bailus Cook & Kelesis
George James Beal
Kirby Wells, Esq.
Clark County Clerk