

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA KINSEL AND MILTON
KINSEL, INDIVIDUALLY, AND AS
HUSBAND AND WIFE,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
VALORIE J. VEGA, DISTRICT JUDGE,
Respondents,
and
WAYNE L. WILSON; AND AUTOZONE,
INC., A NEVADA CORPORATION,
Real Parties in Interest.

No. 48191

FILED

JAN 30 2007

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order granting a motion in limine to exclude supplemental expert reports and testimony. We directed an answer to the petition, which has been filed.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station,¹ or to control a manifest abuse of discretion.² The counterpart to a writ of mandamus, a writ of prohibition is available when a district court

¹See NRS 34.160.

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

acts without or in excess of its jurisdiction.³ Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if a petition will be considered.⁴ Further, a writ of mandamus or prohibition may issue only when there is no plain, speedy, and adequate legal remedy.⁵

In the challenged order, the district court ruled that expert reports produced after the discovery cutoff set forth in the scheduling order would not be admitted at trial, and likewise, that no testimony concerning these reports would be admitted. The reports at issue were supplemental expert reports submitted under NRCP 26(e)(1), which imposes a duty upon litigants to supplement any expert disclosures and reports made in accordance with NRCP 16.1(a)(2)(B), and states that any such supplements are due "by the time the party's disclosures under NRCP 16.1(a)(3) are due." NRCP 16.1(a)(3) provides that, unless otherwise ordered by the court, such information is due "at least 30 days before trial."

The rules' language is plain: supplemental reports are due at least 30 days before trial, unless otherwise ordered by the court. The reports at issue were produced over 40 days before the trial date set at the time they were provided. The scheduling order set a discovery cutoff of May 12, 2006, but it did not alter the date set in NRCP 26(e)(1) for

³State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320.

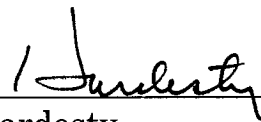
⁴See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).


⁵See NRS 34.170 and 34.330.


supplemental expert reports, and in fact, it echoed NRCP 16.1(a)(3)'s deadline for pretrial disclosures: 30 days before trial. Therefore, petitioners' supplemental reports were provided within the time required and were not subject to exclusion as untimely.⁶

Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order excluding the supplemental reports and related testimony.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Valorie Vega, District Judge
Aaron & Paternoster, Ltd.
Allan P. Capps
Mainor Eglet Cottle, LLP
Alverson Taylor Mortensen & Sanders
Eighth District Court Clerk

⁶We note that the two-month period between the supplemental report and the firm preferential trial setting provided ample opportunity for supplemental depositions of petitioners' experts, if necessary.