

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMAN NEVADA 2K LIMITED
PARTNERSHIP, A NEVADA
CORPORATION D/B/A SAN TROPEZ
APARTMENTS; AND EXECUTIVE
AFFILIATES, INC., AN ILLINOIS
CORPORATION,

Petitioners,

vs.

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

Respondents,

and

ESTATE OF NICOLE ANGEL,
DECEASED, BY AND THROUGH
ALFRED ANGEL, ADMINISTRATOR;
ALFRED ANGEL, INDIVIDUALLY;
AND GREGORIA ANGEL,
INDIVIDUALLY,
Real Parties in Interest.

No. 48454

FILED

APR 12 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 denying petitioners' summary judgment motion in the underlying wrongful death action.

Following the death of Nicole Angel, a former resident at petitioners' apartment complex, real parties in interest, Nicole's estate and

family (the estate), filed a wrongful death complaint, alleging that Nicole's death resulted from her exposure to an adhesive that was used to repair Nicole's ceiling, twenty-two months earlier. A forensic pathologist and the coroner's autopsy report concluded that Nicole had died from a pulmonary embolism related to a blood clot in Nicole's leg.

The estate failed to designate any expert witnesses or file any expert's reports within the time allowed under the discovery scheduling order. Petitioners designated a pulmonary medicine specialist, who opined that the pulmonary embolism caused Nicole's death and was "totally unrelated to her exposure [to the adhesive] 22 months prior." The estate did not present any expert rebuttal witnesses.

Petitioners moved for summary judgment, arguing that the estate had failed to produce any admissible evidence to support the wrongful death claim. The estate opposed the motion, pointing to the deposition of Dr. Prabhu (Nicole's treating physician until about four months before Nicole's death), and arguing that Dr. Prabhu had clearly stated that Nicole had asthma, which was caused by her exposure to the adhesive, and that "asthma can kill." The estate argued that Dr. Prabhu's deposition, when considered in connection with the coroner's testimony that a person with a lung disease, such as asthma, is at greater risk of death from a pulmonary embolism than is a person with healthy lungs, presented a genuine factual issue as to the cause of Nicole's death, sufficient to withstand summary judgment.

Petitioners replied, noting that the estate had not disclosed any experts and asserting that it had failed to lay a foundation on which to present Dr. Prabhu's testimony. Petitioners pointed out that there was no affidavit or other evidence suggesting that Dr. Prabhu was qualified to opine as to Nicole's condition, especially since Dr. Prabhu admitted that he was unaware that Nicole had died, had not reviewed any autopsy report, and had no opinion as to her cause of death. Petitioners asserted that the coroner's testimony failed to support the estate's position that Nicole died from a preexisting asthma condition caused by her one-time exposure to the adhesive.

The district court denied summary judgment, concluding that Dr. Prabhu's deposition testimony had established the possibility that the estate could show that Nicole's death was directly linked to her exposure to the adhesive. Petitioners moved for reconsideration, which was denied. This writ petition followed. The estate has filed a response, as directed.

Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if a petition will be considered.¹ Mandamus relief is available to correct the district court's manifest abuse of, or arbitrary or capricious exercise of, discretion, but prohibition will lie to prevent the district court from acting in excess of its

¹See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

jurisdiction.² Although we generally will not exercise our discretion to consider petitions for extraordinary writ relief that challenge district court orders denying summary judgment, an exception to this general rule exists when judgment in petitioners' favor is clearly required by a statute or rule.³ In that instance, mandamus is appropriate to compel the district court to enter summary judgment.⁴

In this case, NRCP 56(c) clearly mandates judgment in petitioners' favor because the estate failed to demonstrate the existence of a genuine factual issue with regard to the cause of Nicole's death.⁵ Although, in considering petitioners' summary judgment motion, inferences are drawn in favor of the estate, the estate nevertheless was required show that it could present evidence at trial to support its claim.⁶ The estate, however, in response to petitioners' summary judgment motion, pointed to Dr. Prabhu's and the coroner's deposition testimonies, neither of which supported its theory that Nicole's death was caused by

²See State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 237-38 (2002).

³Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

⁴Id. at 1345, 950 P.2d at 1344.

⁵Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1030-31 (2005).

⁶See Van Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414, 633 P.2d 1220 (1981).

her exposure to the adhesive. To the contrary, Dr. Prabhu had no opinion as to Nicole's cause of death and the coroner's opinion was that Nicole died from a pulmonary embolism stemming from a blood clot in her leg. Under these circumstances, we conclude that the district court was required to grant judgment in petitioners' favor.⁷ Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to grant petitioners' motion for summary judgment.

It is so ORDERED.

Parraguirre, J.
Parraguirre

Hardesty, J.
Hardesty

Douglas, J.
Douglas

cc: Eighth Judicial District Court Dept. 17, District Judge
Wood, Smith, Henning & Berman, LLP
Cobeaga Law Firm
Roger O. Steggerda
Eighth District Court Clerk

⁷See Wood, 121 Nev. at 729, 121 P.3d at 1030-31; Van Cleave, 97 Nev. at 417, 633 P.2d at 1222.