

IN THE SUPREME COURT OF THE STATE OF NEVADA

AMERICAN NATIONAL PROPERTY
AND CASUALTY COMPANY,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
TIMOTHY C. WILLIAMS, DISTRICT
JUDGE,

Respondents,

and

BRANDON HANNA; JASON GROSS;
GEORGE GROSS; CAROL GROSS; AND
THE SPORTS CLUB COMPANY, D/B/A
THE SPORTS CLUB/LAS VEGAS, F/K/A
GREEN VALLEY ATHLETIC CLUB,
Real Parties in Interest.

No. 49611

FILED

APR 03 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court order reinstating a personal injury action and setting a briefing schedule regarding real party in interest Brandon Hanna's motion for summary judgment.

This case began as a tort action arising from two separate personal injury incidents, both occurring in August 2001. Seeking damages, Hanna filed a civil action in the district court in December 2001 against real parties in interest The Sports Club Company and George and Carol Gross, the parents of the alleged tortfeasor, asserting, among other things, claims for assault, battery, and negligent and intentional infliction of emotional distress stemming from incidents that occurred at The Sports

Club. The Grosses maintained a homeowner's insurance policy with petitioner American National Property and Casualty Company (ANPAC).

During the district court proceedings, ANPAC intervened to resolve questions related to its insurance coverage of the alleged incidents. The parties subsequently agreed to submit Hanna's tort claims to binding arbitration. An arbitrator ultimately rendered a decision in January 2007, awarding Hanna \$250,000 in damages.

Meanwhile, on October 12, 2006, the district court dismissed the personal injury action, under EDCR 2.90, for lack of prosecution. The next day, ANPAC filed a declaratory relief action in federal court, seeking a declaration that ANPAC does not have a duty to indemnify the parents against Hanna's claims and that ANPAC is not obligated to pay Hanna the arbitration award. Hanna, not contesting the federal court's authority to hear the matter, filed both an answer to ANPAC's federal complaint and a motion for summary judgment.¹ Hanna later filed a motion in the state district court, opposed by ANPAC, seeking to reinstate the personal injury case to determine the insurance coverage issue, and the district court granted his motion.

While the federal declaratory relief action remained pending, the state district court entered an order confirming the arbitration award. ANPAC has now petitioned this court for a writ of prohibition, challenging the district court's authority to exercise its jurisdiction over the case for the purposes of resolving the insurance coverage issue. Hanna has filed an answer, as directed.

¹After a hearing, the federal court denied Hanna's motion for summary judgment.

A writ of prohibition may issue to ensure that a district court does not operate in excess of its jurisdiction or authority.² A writ of prohibition is an extraordinary remedy, and it is within our discretion to determine if a petition will be considered.³ Generally, prohibition will not issue when the petitioner has a “plain, speedy and adequate remedy in the ordinary course of law.”⁴

In its petition, ANPAC argues, among other things, that judicial comity considerations should apply to restrain the state district court from reopening the case to assume jurisdiction over the insurance coverage issue, since the coverage issue is being litigated in federal court.⁵ We agree.

Comity “is a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect.”⁶ Although the decision to invoke comity involves the court’s discretion,⁷ comity considerations generally will

²NRS 34.320; Ashokan v. State, Dep’t of Ins., 109 Nev. 662, 664-65, 856 P.2d 244, 245-46 (1993).

³Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

⁴NRS 34.330.

⁵ANPAC additionally argues that the pleadings in state district court did not raise the insurance coverage issue, and that ANPAC only intervened in the arbitration proceedings for the limited purposes of submitting appropriate jury instructions, verdict forms, and special interrogatories.

⁶Mianecki v. District Court, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983).

⁷Id. at 98, 658 P.2d at 425.

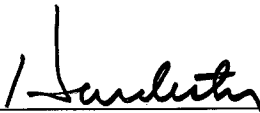
preclude one court from interfering with the prosecution of an earlier-instituted proceeding in another jurisdiction, when the court in that other jurisdiction is capable of affording adequate relief and complete justice.⁸

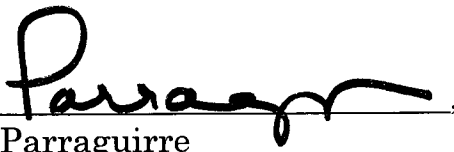
Having reviewed and considered ANPAC's petition, Hanna's answer, and the parties' supporting documentation, we conclude that our extraordinary intervention is warranted, and we grant the petition. Important considerations of judicial comity, such as the risk of confusion and conflicting orders, should have led the district court to abstain from reopening the personal injury action to exercise jurisdiction over the insurance coverage matter. We note in particular that Hanna consented to the federal court's authority when he filed his answer to ANPAC's federal complaint, and that Hanna defended against ANPAC's complaint by filing a motion for summary judgment in federal court. In doing so, Hanna apparently conceded that his rights were sufficiently protected in federal court. As the district court thus lacked authority to exercise simultaneous jurisdiction over the insurance coverage matter because that that matter was pending before another court, we grant ANPAC's petition and direct the clerk of this court to issue a writ of prohibition directing the district court to refrain from taking any further action in the personal injury action to determine the insurance coverage issue and abstain from

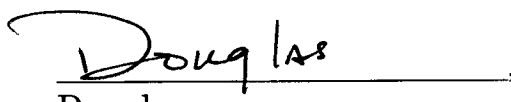
⁸See F.F. v. G.A.D.R., 750 A.2d 786, 790 (N.J. Super. Ct. App. Div. 2000); see also Grimes v. Liberty Nat. Life Ins. Co., 726 So. 2d 615, 617-18 (Ala. 1998) (noting the use of a writ of prohibition to restrain one court from exercising jurisdiction over a matter pending in another court); Clampitt v. Johnson, 359 P.2d 588, 592-95 (Okl. 1961) (granting a writ of prohibition and recognizing that, under the doctrine of comity, a court should decline to exercise jurisdiction of a matter when an action already is pending in a convenient and competent forum, and where the exercise of jurisdiction by the court might lead to confusion and conflicting orders).

assuming or exercising jurisdiction over the insurance coverage matter,
case number A443672.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Timothy C. Williams, District Judge
Patton Shea & Kiraly
Albert D. Massi, Ltd.
Perry & Spann/Las Vegas
Prince & Keating, LLP
Eighth District Court Clerk