IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICIA FIERLE AND DANIEL FIERLE,
Petitioners,
vs.
THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR CARSON CITY, AND THE HONORABLE WILLIAM A. MADDOX, DISTRICT JUDGE,
Respondents,
and
JORGE PEREZ MD LTD., A NEVADA PROFESSIONAL CORPORATION D/B/A SIERRA NEVADA ONCOLOGY CARE; JORGE PEREZ, MD, PHD, MRCP, MRCPATH, AN INDIVIDUAL; LINDA LESPERANCE, RN, APN-C, AN INDIVIDUAL; CHARMAINE CRUET, RN, APN-C, AN INDIVIDUAL; AND MELISSA MITCHELL, RN, AN INDIVIDUAL,
Real Parties in Interest.

No. 49830

FILED

AUG 0 8 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order striking petitioners' complaint and dismissing their medical malpractice action against real parties in interest.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse or arbitrary or

07-17396

capricious exercise of discretion.[1] Mandamus is an extraordinary remedy, however, and the decision to entertain such a petition is addressed to this court's sole discretion.[2] Mandamus relief generally is not available when petitioners have a plain, speedy, and adequate remedy in the ordinary course of law, such as an appeal.[3]

The order that petitioners challenge in their petition for mandamus relief is a final appealable order,[4] and petitioners acknowledge that they have filed a notice of appeal from that order.[5] Nevertheless, petitioners assert that our consideration of this petition is appropriate "under the circumstances of this case" because their pending appeal does not provide them with a plain, speedy, and adequate remedy at law. According to petitioners, writ relief is appropriate here—despite the availability of an appeal in which they could raise any legal issues arising from the dismissal order—because those issues are important and in need

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

[2]See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

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

[4]See NRAP 3A(b)(1); Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (explaining that a judgment is final when, as with the present matter, it disposes of all of the issues presented in the case, and leaves nothing for the court's future consideration, except for post-judgment issues).

[5]See Fierle v. Perez, Docket No. 49602.

of clarification, and, since petitioner Patricia Fierle "still suffers the effects of the chemical burn," and petitioner Daniel Fierle "suffers loss of consortium," they "should not have to wait for years to have their day in court." Thus, they assert that this court should exercise its discretion to consider this writ for "urgency" and "strong necessity" reasons.

We are not persuaded by petitioners' reasoning that this court's consideration of this matter by means of writ petition is warranted,[6] and because their ability to appeal from the challenged order provides them with a plain, adequate, and speedy remedy at law, precluding writ relief, we

ORDER the petition DENIED.[7]

_____, J.
Parraguirre

_____, J.
Hardesty

_____, J.
Saitta

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[6]Pan, 120 Nev. at 224, 88 P.3d at 841; Karow v. Mitchell, 110 Nev. 959, 962, 878 P.2d 978, 981 (1994) (denying a writ petition because the petitioner had appealed from the challenged order); NRS 34.170.

[7]To the extent that petitioners imply that any medical or loss of consortium concerns present urgent circumstances requiring acceleration of the normal appellate process, they may file a motion for an expedited decision in the context of their pending appeal.

cc: Hon. William A. Maddox, District Judge
Sullivan Law Offices
Lauria Tokunaga Gates & Linn, LLP
Lemons Grundy & Eisenberg
Carson City Clerk