

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA MUTUAL INSURANCE COMPANY,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE, AND THE
HONORABLE ROBERT H. PERRY,
DISTRICT JUDGE,

Respondents,

and


JOHN BARRERA; THOMAS SANDERS, M.D.;
NORTHERN NEVADA EMERGENCY
PHYSICIANS; AND WILLIAM MISHLER,
M.D.,

Real Parties in Interest.

No. 50130

FILED

OCT 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DISMISSING PETITION FOR
WRIT OF PROHIBITION OR MANDAMUS

This original petition for a writ of prohibition or mandamus challenges a district court order directing petitioner to produce certain documents to real party in interest John Barrera's counsel.

Petitioner Nevada Mutual Insurance Company is not a party to the medical malpractice action below. Nevada Mutual is the insurer of real party in interest William Mishler, M.D. After a jury entered a verdict against Dr. Mishler, Nevada Mutual, appearing as a "Non-Party," and Dr. Mishler resisted Barrera's efforts to obtain documents regarding Dr. Mishler's insurance coverage, which appears to bear on whether a statutory limit on Barrera's damages award is applicable.¹ Ultimately,

¹See NRS 41A.031 (repealed 2004); Mishler v. Dist. Ct. (Barrera), Docket No. 49782 (Order Denying Petition, July 12, 2007) (denying a writ petition challenging the district court's directive to produce certain documents for in camera review); Nevada Mutual Insurance Co. v. District

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following the district court's in camera review of the documents that Barrera sought to obtain, the court directed Nevada Mutual to produce several of the disputed documents. This petition followed.

Both prohibition and mandamus are extraordinary remedies, and it is within our discretion to determine if a petition will be considered.² After reviewing this petition and Nevada Mutual's supplement thereto, we are not satisfied that our extraordinary intervention is warranted.

Specifically, after this petition was filed, Nevada Mutual filed a "supplemental brief" noting that, after the district court entered the order that Nevada Mutual is challenging, the court, as a discovery sanction against Nevada Mutual and Dr. Mishler, entered an order barring Nevada Mutual and Dr. Mishler from producing any evidence regarding the issues remaining below and noting that the disputed "documents [no longer] need to be produced." The court's order also determined that, because the remaining issues no longer can be contested, "a final judgment may be entered." In its supplement, Nevada Mutual maintains that the court's subsequent order, which effectively vacates the order that it is challenging, does not render this petition moot.³

... continued

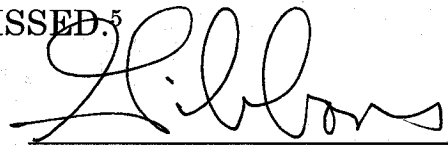
Court (Barrera), Docket No. 49984 (Order Denying Petition for Writ of Prohibition or Mandamus, August 10, 2007) (denying a writ petition challenging the district court's order denying a motion for a protective order and directive to produce certain documents for in camera review).

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

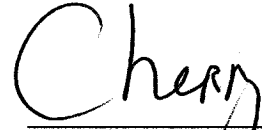
³Similarly, Dr. Mishler has filed a motion in this court styled "Response to Motion to Seal Privileged Documents," which, its title notwithstanding, primarily argues that this petition is not moot.

But “the duty of every judicial tribunal is to decide actual controversies by a judgment that can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it.”⁴ Here, addressing Nevada Mutual’s challenge to the district court’s directive that it produce certain documents, when Nevada Mutual concedes that the court now precludes it from producing any documents, would be to address a controversy that no longer exists and to declare principles of law that cannot affect the matter before us. Accordingly, as it is moot, we

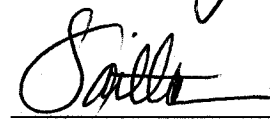
ORDER the petition DISMISSED.⁵


_____ J.

Gibbons


_____ J.

Cherry


_____ J.

Saitta

⁴University Sys. v. Nevadans for Sound Gov’t, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (quoting NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981)).

⁵To the extent that Nevada Mutual or any party below wishes to challenge the court’s order barring Nevada Mutual and Dr. Mishler from producing any evidence regarding issues remaining below and resolving those issues in Barrera’s favor, that challenge appears best brought in an appeal from any final judgment or, if necessary and appropriate, a separate writ petition. See Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (noting that an appeal generally is an adequate legal remedy that precludes writ relief).

cc: Hon. Robert H. Perry, District Judge
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