

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENOWN REGIONAL MEDICAL CENTER,
A NEVADA CORPORATION F/K/A
WASHOE MEDICAL CENTER, INC., A
NEVADA CORPORATION, D/B/A WASHOE
MEDICAL CENTER,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF WASHOE,
AND THE HONORABLE STEVEN P.
ELLIOTT, DISTRICT JUDGE,

Respondents,

and

TERRY C. THOLL, INDIVIDUALLY, AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF PAUL A. "PAT" THOLL,
JR.; RANDY A. THOLL, INDIVIDUALLY;
JULIE THOLL DEJAN, INDIVIDUALLY;
PAUL N.A. THOLL, INDIVIDUALLY;
WARREN MAYS, M.D., INDIVIDUALLY;
RENO RADIOLOGICAL ASSOCIATES,
CHARTERED; AND ROBERT W. KENTON,
M.D.,

Real Parties in Interest.

No. 50381

FILED

JAN 15 2008

FRANIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order that granted real parties in interests' motions for good faith settlement determinations in a medical malpractice action.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or

station, or to control a manifest abuse of discretion.¹ However, a writ of mandamus is an extraordinary remedy that will not issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.² We have consistently held that an appeal is an adequate legal remedy precluding writ relief.³ We avoid piecemeal appellate review and seek to review possible errors only after the district court has entered a final judgment.⁴ Further, it is within our discretion to determine if a petition will be considered.⁵ Petitioner bears the burden of demonstrating that extraordinary relief is warranted.⁶

In the challenged order, the district court ruled that petitioner's right to contribution and implied or equitable indemnity claims were extinguished pursuant to NRS 17.245, as a result of the district court's determination that the settlements between plaintiffs and petitioner's co-defendants were made in good faith. Petitioner contends that writ relief is warranted because Van Cleave v. Gamboni Construction⁷ is a non-legislative cost-shifting measure and urges us to

¹See NRS 34.160; Mineral County v. State, Dep't of Conserv., 117 Nev. 235, 20 P.3d 800 (2001).

²NRS 34.170; Gumm v. State, Dep't of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005).

³Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

⁴Moore v. District Court, 96 Nev. 415, 417, 610 P.2d 188, 189 (1980).

⁵Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

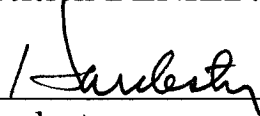
⁶Pan, 120 Nev. at 228, 88 P.3d at 844.

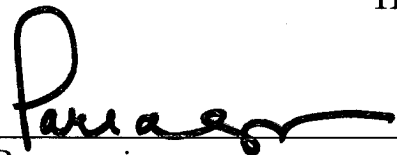
⁷101 Nev. 524, 706 P.2d 845 (1985).

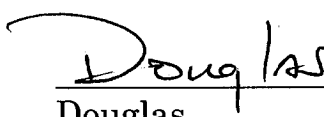
overrule Van Cleave based on public policy and our decision in Medallion Development, Inc. v. Converse Consultants.⁸

Having reviewed the petition, we are not persuaded that writ relief is warranted. First, petitioner failed to provide copies of documents that are essential to our understanding of the matters addressed in its petition.⁹ Second, petitioner has not met its burden to demonstrate that an appeal from any adverse final judgment would not be an adequate legal remedy, particularly when there remain factual determinations for a jury to consider, such as whether an ostensible agency theory has been established and whether petitioner is, in fact, required to pay any monetary damages due to the alleged ostensible agency relationship. Finally, the district court's good faith determinations do not preclude petitioner from asserting any contractual or express indemnity claims that may exist.¹⁰ Accordingly, we

ORDER the petition DENIED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁸113 Nev. 27, 930 P.2d 115 (1997). See Doctors Company v. Vincent, 120 Nev. 644, 654, 98 P.3d 681, 688 (2004) (recognizing that Medallion was superseded by the Legislature's 1997 amendment to NRS 17.245).

⁹NRAP 21(a); See also Pan, 120 Nev. at 228-29, 88 P.3d at 844.

¹⁰Insurance Co. of the West v. Gibson Tile, 122 Nev. 455, ___, 134 P.3d 698, 704 (2006) (Maupin, J. concurring).

cc: Hon. Steven P. Elliott, District Judge
Piscevich & Fenner
Cowan Law Office
Gerald I. Gillock & Associates
Lemons Grundy & Eisenberg
Washoe District Court Clerk