

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER E. STRATTON; JAMES
JOHN PERI; AND PERI & SONS FARMS,
INC., A NEVADA CORPORATION,
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF WASHOE,
AND THE HONORABLE CONNIE J.
STEINHEIMER, DISTRICT JUDGE,
Respondents,

and

JUANITA R. DUNCAN, INDIVIDUALLY
AND AS SPECIAL ADMINISTRATOR OF
THE ESTATE OF LARRY THOMAS
DUNCAN, DECEASED; GREGORY
DUNCAN; DEBRA DUNCAN; BRENDA
KASPER; AND LYNNE BROWN,
Real Parties in Interest.

No. 50836

FILED

MAY 15 2009

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order granting a new trial. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

This case arises out of a fatal multi-vehicle accident. The case was tried to a jury, which returned a verdict in favor of petitioners. Real parties in interest then filed a motion for a new trial, arguing that several errors during the trial necessitated a new trial. The district court granted the new trial motion, concluding that there was error in allowing certain testimony from a highway patrol trooper and because of improper testimony by one of the petitioners stating that he did not receive a traffic citation as a result of the accident.

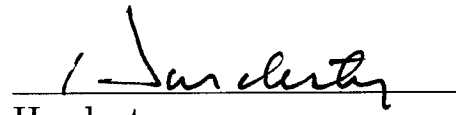
While an order granting a new trial is an appealable order, see NRAP 3A(b)(2), because of procedural irregularities in this case, we determined that it was appropriate, and in the interest of judicial economy, to allow petitioners to challenge the district court order granting a new trial directly through this writ petition. A district court's order granting a new trial is reviewed for an abuse of discretion. Nelson v. Heer, 123 Nev. 217, ___, 163 P.3d 420, 425 (2007). An abuse of discretion is established if the district court's decision "is arbitrary or capricious or if it exceeds the bounds of law or reason." Matter of Eric L., 123 Nev. 26, ___, 153 P.3d 32, 36-37 (2007). The grounds for granting a new trial are outlined in NRCP 59(a), which states in relevant part that

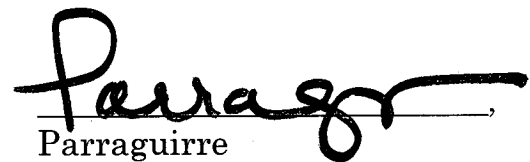
[a] new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion.

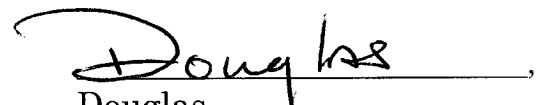
Having reviewed the relevant briefs and documents submitted to this court, we conclude that the district court did not abuse its discretion in granting the motion for a new trial. The district court's conclusion that portions of the highway patrol trooper's testimony and

testimony that a party did not receive a traffic citation required a new trial was not arbitrary, capricious, or outside the bounds of law or reason. See Frias v. Valle, 101 Nev. 219, 221, 698 P.2d 875, 876 (1985); Choat v. McDorman, 86 Nev. 332, 334-35, 468 P.2d 354, 355-56 (1970).¹ Therefore, the district court did not abuse its discretion and we

ORDER the petition DENIED.

 _____, C.J.
Hardesty

 _____, J.
Parraguirre

 _____, J.
Douglas

cc: Hon. Connie J. Steinheimer, District Judge
Emerson & Manke, LLP
Erickson Thorpe & Swainston, Ltd.
Lemons Grundy & Eisenberg
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Bradley Drendel & Jeanney
Peter Chase Neumann
Washoe District Court Clerk

¹We note that petitioners argued in their briefs that real parties in interest should not be allowed to rely on the highway patrol trooper's testimony as a basis for a new trial under the "invited error" doctrine. This argument was not raised by petitioners in their oppositions to the new trial motion below, however, and therefore cannot be raised for the first time in this court. Pope v. Motel 6, 121 Nev. 307, 319, 114 P.3d 277, 285 (2005).