

IN THE SUPREME COURT OF THE STATE OF NEVADA

ATC/VANCOM, INC. AND WAYNE  
SCOTT MANDELSTEIN,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
MICHELLE LEAVITT, DISTRICT  
JUDGE,

Respondents,

and

NELIA STEWART,  
Real Party in Interest.

No. 50861

**FILED**

JUN 13 2008

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying petitioners' motion for leave to file a third party complaint.

A writ of mandamus is an extraordinary remedy, and the determination of whether to consider a petition is solely within our discretion.<sup>1</sup> A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.<sup>2</sup> The petition will only be granted when the petitioners have a clear right to

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<sup>1</sup>See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

<sup>2</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

the relief requested and no plain, speedy, and adequate remedy in the ordinary course of law.<sup>3</sup> Furthermore, the burden is on the petitioners to establish that mandamus relief is appropriate.<sup>4</sup>

Having reviewed the petition, answer, and supporting documents, we conclude that writ relief is appropriate. The district court denied petitioners' request for leave to file a third-party complaint on the grounds that petitioners' indemnity claims were barred because its duty to maintain its van's engine was a non-delegable duty, relying on Wentworth v. Ford Motor Co.<sup>5</sup> Even if such maintenance were a non-delegable duty,<sup>6</sup> however, petitioners would not necessarily be precluded from seeking indemnity from a third-party, but only from raising the third party's responsibility as a defense to the plaintiff's action against petitioners.<sup>7</sup> Thus, the district court improperly determined that petitioners were

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<sup>3</sup>Gumm v. State, Dep't of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005).

<sup>4</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); NRAP 21(a).

<sup>5</sup>88 Nev. 535, 501 P.2d 1218 (1972).

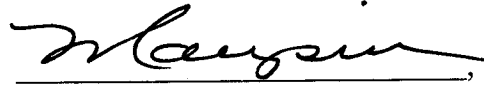
<sup>6</sup>We do not decide this issue as it does not pertain to the resolution of this writ petition and was not raised by the parties.

<sup>7</sup>See Reid v. Royal Insurance Co., 80 Nev. 137, 142-43, 390 P.2d 45, 48 (1964). We note that Wentworth supports such a conclusion, as it recognized that a party which has a non-delegable duty towards the plaintiff may nevertheless seek indemnity from another party for its liability based on the non-delegable duty. See Wentworth, 88 Nev. at 538, 501 P.2d at 1220.

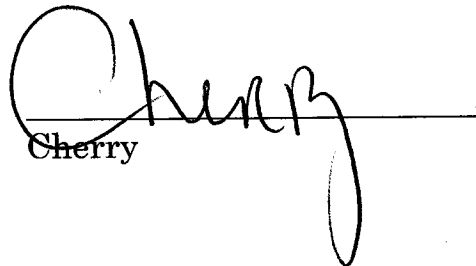
precluded from bringing a third-party complaint based on indemnity.<sup>8</sup> The district court also improperly determined that petitioners' proposed third-party complaint did not assert a contractual indemnity claim, which the district court recognized would be valid even under its incorrect interpretation of the holding in Wentworth.

Accordingly, we grant the petition for a writ of mandamus. We instruct the clerk of this court to issue a writ of mandamus directing the district court to vacate its order denying the motion for leave to file a third-party complaint and enter an order granting the motion.

It is so ORDERED.

 J.

Maupin

 J.

Cherry

SAITTA, J., dissenting:

I do not agree that this court's intervention by way of extraordinary relief is warranted, and therefore, I dissent.

 J.

Saitta

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<sup>8</sup>In so holding, we do not reach a determination as to the merits of petitioners' indemnity or other third-party claims.

cc: Hon. Michelle Leavitt, District Judge  
Wolfenzon Schulman & Ryan  
Attorney General Catherine Cortez Masto/Las Vegas  
Law Offices of Chad M. Golightly  
Eighth District Court Clerk