

IN THE SUPREME COURT OF THE STATE OF NEVADA

REXEL SUMMERS,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
BRENT T. ADAMS, DISTRICT JUDGE,
Respondents,
and
ROXANNE MODZIK,
Real Party in Interest.

No. 51167

FILED

JUN 13 2008

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging district court orders imposing a sanction and denying a motion for reconsideration of the sanction order.

Real party in interest Roxanne Modzik instituted the underlying action against petitioner Rexel Summers, among others, after receiving an electrical shock while turning on a power pole light switch. Rexel Summers is the distribution company of the power pole in question and was involved in ordering a light fixture from the pole's manufacturer. After Modzik instituted her action, it was scheduled for a settlement conference before the district court judge.

At the settlement conference, Rexel Summers was represented by counsel and a third party administrator. According to Rexel Summers, before any settlement offer was made, the district court questioned the third party administrator as to whether she had authority to settle the matter on Rexel Summers' behalf for \$100,000. The third party administrator stated that she would need to make a telephone call for a

settlement contribution at that level. The district court consequently terminated the settlement conference and sanctioned Rexel Summers for failing to have a representative present with settlement authority. Thereafter, Rexel Summers moved the district court to reconsider the sanction against it. The district court denied the motion. This writ petition followed. Modzik timely filed an answer, as directed.

Rexel Summers contends that the district court manifestly abused its discretion by imposing sanctions because Rexel Summers did not violate a rule, court order, or statute. Additionally, Rexel Summers asserts that the district court never inquired as to whether the third party administrator did in fact have any settlement authority. Moreover, Rexel Summers asserts that as a mere distributor of the power pole at issue, it does not have any liability in this matter, but that Rexel Summers nonetheless appeared in good faith to discuss settlement at the conference. Rexel Summers further contends that the approximately \$11,000 in sanctions is excessive.

In opposing the petition, Modzik argues that the sanction was appropriate because all of the other defendants were in attendance at the settlement conference with counsel and a representative with full settlement authority. She further argues that the petition should be denied because the amount of the sanction is not excessive given the number of parties who attended and the costs associated with attending the settlement conference.

A writ of mandamus may appropriately issue to remedy the district court's improper imposition of sanctions,¹ because that writ is

¹See Marshall v. District Court, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992).

available to control a manifest abuse of discretion.² Mandamus is an extraordinary remedy that generally will not issue if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.³ When circumstances reveal an urgency or strong necessity, however, extraordinary relief may be available,⁴ although 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

Having considered the parties' arguments and supporting documentation, we conclude that the district court manifestly abused its discretion when it terminated the settlement conference and imposed a sanction against Rexel Summers. Under NRCP 16(f), the district court may sanction a party or its attorney for failing to "obey a scheduling or pretrial order" or for failing to "participate in good faith."

Here, although the district court sanctioned Rexel Summers for attending the conference without a representative with full settlement authority, neither the order scheduling the settlement conference, nor the case management order specifies that a representative with full

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

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

⁴Falcke v. Douglas County, 116 Nev. 583, 586, 3 P.3d 661, 662 (2000).

⁵Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

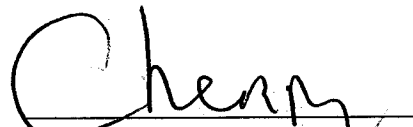
⁶Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

settlement authority was required to attend the scheduled conference.⁷ Further, nothing in the record indicates that Rexel Summers did not act in good faith when a company representative was present and a telephone call apparently could have satisfied the district court's inquiry.⁸ Accordingly, the district court manifestly abused its discretion when it imposed a sanction against Rexel Summers, and we grant this petition. The clerk of this court shall issue a writ of mandamus directing the district court to vacate its order imposing a sanction against petitioner.⁹


It is so ORDERED.¹⁰

 _____, J.

Maupin

 _____, J.

Cherry

 _____, J.

Saitta

⁷Cf. NRCP 16(c) (allowing the district court to require that a party or its representative attend or be reasonably available by telephone to facilitate possible settlement).

⁸See NRCP 16(f) (providing that sanctions may be issued if a party or its attorney, among other things, "fails to participate in good faith").

⁹In light of this order, petitioner's requested relief concerning the denial of its motion for reconsideration is denied as moot.

¹⁰The request for attorney fees submitted by real party in interest is denied. See NRAP 27(a).

cc: Hon. Brent T. Adams, District Judge
Lincoln, Gustafson & Cercos
Herb Santos Sr.
Washoe District Court Clerk