

IN THE SUPREME COURT OF THE STATE OF NEVADA

INGER CASEY,
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CHURCHILL, AND THE HONORABLE
DAVID A. HUFF, DISTRICT JUDGE,
Respondents,
and
WELLS FARGO BANK, N.A.,
Real Party in Interest.

No. 51593

FILED

SEP 25 2009

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

ORDER DENYING PETITION

This is a petition for a writ of mandamus arising out of the district court's order striking petitioner Inger Casey's jury demand.

FACTS AND PROCEDURAL HISTORY

Casey has a checking account with real party in interest Wells Fargo Bank. The checking account includes a Consumer Account Agreement and Safe Deposit Box Lease Terms (Consumer Account Agreement) that contains a jury trial waiver provision. The underlying dispute between the parties began when Wells Fargo froze the funds in Casey's account after she unilaterally endorsed and deposited checks into her account that had been made jointly payable to her and two other individuals. Believing a disagreement regarding the checks would arise between Casey and the additional payees, Wells Fargo filed an interpleader action. Casey filed a counterclaim against Wells Fargo that included a jury demand. She moved for, and the district court granted,

bifurcation of the interpleader action from the counterclaim that she brought against Wells Fargo.

In the bifurcated case between Casey and Wells Fargo, Wells Fargo moved to strike Casey's jury demand. The district court granted the motion and entered an order striking Casey's jury demand. The district court found that the Consumer Account Agreement's jury trial waiver was "conspicuous and stated in understandable language" and had been supplied to Casey, who knowingly and voluntarily consented to its terms. The district court further found that, if she disagreed with the Consumer Account Agreement's terms, she had the "choice to move her banking."

Casey now petitions for a writ of mandamus, asking this court to direct the district court to reinstate the jury demand. Casey asserts that the district court abused its discretion when granting Wells Fargo's motion to strike her jury demand. In response, Wells Fargo contends that this court should not entertain Casey's petition. Wells Fargo argues that Casey's petition fails because she has not demonstrated that the district court's order striking the jury demand was arbitrary or capricious.

We conclude that Wells Fargo is correct: Casey has failed to demonstrate that the district court abused its discretion when it entered the order striking her jury demand. Therefore, we determine that Casey's arguments to the contrary are without merit and we order the petition for writ of mandamus denied. As the parties are familiar with the facts of this case, we do not recount them except as necessary to our disposition.

DISCUSSION

Casey argues that the district court's order striking her jury demand was arbitrary and capricious because Lowe Enterprises v. District Court, 118 Nev. 92, 40 P.3d 405 (2002), does not support the district court's decision. We disagree.

“A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion.” Clark County Dist. Att’y v. Dist. Ct., 123 Nev. 337, 342, 167 P.3d 922, 925 (2007) (citing NRS 34.160); see Lowe Enterprises, 118 Nev. at 95, 40 P.3d at 407. A writ of mandamus is only appropriate if there is no other “plain, speedy and adequate remedy in the ordinary course of law.” Lowe Enterprises, 118 Nev. at 95-96, 40 P.3d at 407 (quoting NRS 34.170). Even if an effective alternative remedy exists, this court “may entertain a petition for mandamus under urgent circumstances or ‘when an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition.’” State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 449, 92 P.3d 1239, 1242 (2004) (quoting State of Nevada v. Dist. Co. (Ducharm), 118 Nev. 609, 614, 55 P.3d 420, 423 (2002)). However, whether this court will consider a petition for a writ of mandamus is entirely within its discretion, and it is the petitioner's burden to demonstrate that such relief is warranted. American Home Assurance Co. v. Dist. Ct., 122 Nev. 1229, 1234, 147 P.3d 1120, 1124 (2006).

In Nevada, “contractual jury trial waivers are presumptively valid unless the challenging party can demonstrate that the waiver was not entered into knowingly, voluntarily or intentionally.” Lowe Enterprises, 118 Nev. at 100, 40 P.3d at 410. When determining whether

a jury trial waiver was made knowingly, voluntarily, and intentionally, a court may consider the following nonexhaustive list of factors: (1) the conspicuousness of the waiver, (2) the parties' relative bargaining powers, (3) any negotiations by the parties concerning the waiver, and (4) whether counsel for the waiving party had reviewed the agreement.¹ Id. at 100-01, 40 P.3d at 410-11.

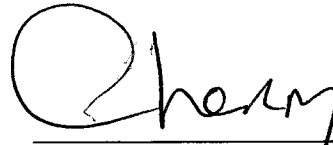
We conclude that the district court properly found that the jury trial waiver was valid. Casey has failed to show that she did not enter into the waiver knowingly, voluntarily, or intentionally. Rather, the facts fully support the district court's conclusion. The jury trial waiver is conspicuous: it is properly titled as such, it is not buried in the Consumer Account Agreement, and the font is bolded and the same size as the font found in the rest of the document. See Mall, Inc. v. Robbins, 412 So. 2d 1197, 1199 (Ala. 1982) (noting that the jury trial waiver was conspicuous because it was titled as such); Malan Realty Investors, Inc. v. Harris, 953 S.W.2d 624, 627 (Mo. 1997) (noting that the jury trial waiver was conspicuous because it was the sole paragraph on the document's last page and the print size was the same as in the rest of the document). Further, Casey had substantial bargaining power with Wells Fargo because, as the district court noted, she had complete control over whether she kept her checking account at the bank.

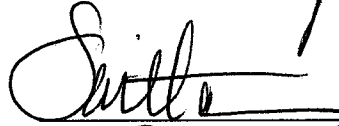
¹Casey presented no arguments concerning the last two factors and, therefore, we do not discuss them in our order. However, we note that the factors outlined in Lowe are merely a nonexhaustive list of suggestions and no one factor is determinative of a case. See Lowe Enterprises, 118 Nev. at 100-01, 40 P.3d at 410-11.

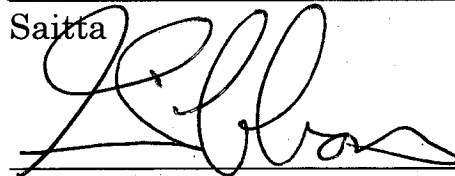
Therefore, we conclude that Casey has failed to meet her burden of demonstrating that the extraordinary relief of a writ of mandamus is warranted because she has not shown that the district court manifestly abused its discretion.

Accordingly, we

ORDER the petition DENIED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. David A. Huff, District Judge
Smith & Harmer
Lewis & Roca, LLP/Reno
Churchill County Clerk