

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK MCNULTY, M.D.; NEVADA
ORTHOPEDIC & SPINE CENTER, LLP;
AND SAMSON OTUWA, M.D.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
DAVID BARKER, DISTRICT JUDGE,
Respondents,
and
AMERICAN COUNTRY INSURANCE
COMPANY; AND FRIAS HOLDING
COMPANY D/B/A VEGAS WESTERN
CAB; MICHAEL CICCHINI,
Real Parties in Interest.

No. 53968

FILED

MAY 16 2011

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

ORDER GRANTING IN PART, AND DENYING IN PART, PETITION
FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order denying a motion for summary judgment in an action for contribution and indemnity. We grant writ relief as to the contribution claim but deny it as to the indemnity claim.

Factually, this proceeding grows out of an accident that injured taxicab passenger Michael Cicchini. Petitioners Patrick McNulty, M.D., Nevada Orthopedic & Spine Center, LLP, and Samson Otuwa, M.D. (collectively, McNulty) performed post-accident back surgery on Cicchini. The surgery allegedly aggravated the injuries Cicchini suffered in the accident and left him partially paralyzed.

Cicchini sued the taxicab company, Vegas Western Cab ("VWC"),¹ whose insurer settled on its behalf with Cicchini for \$1,150,000. Cicchini signed a release, but it did not extinguish McNulty's liability. In fact, the release included a clause stating that the payment:

... is not, nor is it intended to be construed as, an admission of cause of the need for surgery of any kind. The parties to this Release expressly agree that the subject motor vehicle accident did not cause the need for surgery of any kind. Accordingly, the parties stipulate that neither the lumbar surgery nor the complications related thereto are proximately or causally related to the subject motor vehicle accident[.]

After settling with each other, both Cicchini and VWC separately sued McNulty. Cicchini's suit seeks damages from McNulty for alleged medical malpractice. VWC's suit seeks contribution and indemnity from McNulty on the grounds that the surgery, not the accident, caused Cicchini's damages, entitling VWC to reimbursement for part or all of the \$1,150,000 settlement. It is VWC's suit for contribution and indemnity that underlies this writ proceeding.

McNulty moved to dismiss or for summary judgment. The district court denied his motion. McNulty now seeks mandamus from this court on the basis that the district court manifestly abused its discretion

¹We use "VWC" as shorthand to include real parties in interest Frias Holding Company, dba Vegas Western Cab Company, and its insurer, American Country Insurance Company. Though named in the caption, Cicchini did not appear in this court.

by not dismissing VWC's claims or granting summary judgment in his favor.

Mandamus is an extraordinary remedy, only "available when the petitioner has no 'plain, speedy and adequate remedy in the ordinary course of law.'" D.R. Horton v. Dist. Ct., 123 Nev. 468, 474, 168 P.3d 731, 736 (2007) (quoting NRS 34.170; NRS 34.330). "The right to immediately appeal or even to appeal in the future, after a final judgment is ultimately entered, will generally constitute an adequate and speedy legal remedy precluding writ relief." Id. Only rarely, therefore, will this court exercise its discretion to entertain writs seeking relief from an order denying a motion to dismiss or for summary judgment. Smith v. District Court, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997). Exceptions arise

when either (1) no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule, or (2) an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.

International Game Tech. v. Dist. Ct., 124 Nev. 193, 197-98, 179 P.3d 556, 559 (2008).

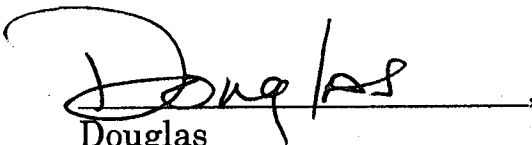
Here, we conclude that McNulty is entitled to a writ of mandamus compelling the district court to dismiss VWC's contribution claim because clear statutory authority requires dismissal. By its terms, the release did not extinguish McNulty's liability to Cicchini. Under NRS 17.225(3):

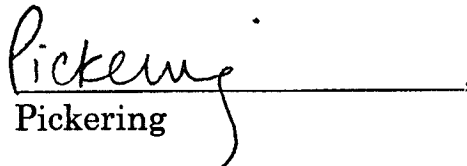
A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement

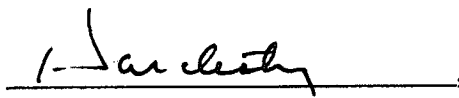
The statute's wording is plain and its application clear: VWC has no contribution claim against McNulty. Accordingly, we grant the petition for a writ of mandamus requiring the district court to dismiss VWC's contribution claim.

Whether and, if so, to what extent VWC can maintain an indemnity claim against McNulty is much less clear. McNulty acknowledges this, but urges that it represents an important issue of law that requires clarification and that sound judicial economy and administration militate in favor of granting the petition in its entirety. The difficulty with McNulty's position, however, is that the scope of the indemnity claim depends on as yet undeveloped matters. Those matters include, but are not limited to: McNulty's liability to Cicchini, if any; the amount of damages Cicchini may recover from McNulty, if any; whether any such damages are subject to reduction by reason of VWC's payment to Cicchini and, if so, by how much; the language in the release disavowing imputed causation and its impact, if any, on the determination of this cause; and application of equitable indemnity in the successive tortfeasor/medical malpractice setting. These and other open issues deserve to be developed in the district court and make it inappropriate to decide whether VWC is entitled to indemnity by extraordinary writ. Also important: The district court has ordered that trial in this case not begin until trial in the Cicchini v. McNulty malpractice case concludes, which mitigates the inefficiencies McNulty fears. Because our deciding the indemnity issue at this time would be premature, and eventual appeal appears to be an adequate legal remedy for all parties, we

ORDER the petition for writ relief GRANTED IN PART AND DENIED IN PART.


_____, C.J.
Douglas


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. David B. Barker, District Judge
Jimmerson Hansen
John H. Cotton & Associates, Ltd.
Patti, Sgro & Lewis
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.
Eighth District Court Clerk