

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALOK SAXENA, M.D., INDIVIDUALLY;
VEGAS VALLEY PRIMARY CARE, A
NEVADA CORPORATION; ALOK C.
SAXENA, M.D. CHARTERED, A
NEVADA CORPORATION; JANET
WHEBLE, PA-C, INDIVIDUALLY; AND
JANET WHEBLE, PAC, LTD., A
NEVADA CORPORATION,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JESSIE WALSH, DISTRICT JUDGE,
Respondents,

and

ROBERT ANSARA, AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF ANDREW PEDRETTI; AND KAREN
GRZEDA, INDIVIDUALLY,
Real Parties in Interest.

No. 54775

FILED

JAN 08 2010

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

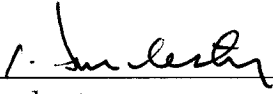
ORDER GRANTING IN PART PETITION FOR WRIT OF MANDAMUS

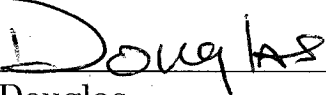
This original petition for a writ of mandamus challenges a district court order concluding that real parties in interest's claims for elder abuse are distinct from their claims for medical malpractice and an order denying petitioners' motion for summary judgment on all claims.


Having reviewed the pleadings and documents submitted, we grant the writ petition in part. The district court erred in not granting summary judgment in favor of petitioners on the real parties in interest's medical malpractice claims. The district court was required to dismiss the medical malpractice claims without prejudice, as the complaint was filed

without the necessary medical affidavit and therefore void ab initio.¹ NRS 41A.071; Washoe Med. Ctr. v. Dist. Ct., 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006). We deny the remainder of the writ petition, as we are not persuaded that writ relief is warranted. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (stating that mandamus is an extraordinary remedy and whether a petition will be considered is within our sole discretion). In particular, petitioners have an adequate remedy in the form of an appeal from any adverse final judgment, in which they may assert their arguments concerning the proper characterization of the elder abuse claims. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Accordingly, we direct the clerk of this court to issue a writ of mandamus directing the district court to enter an order dismissing only the medical malpractice claims of real parties in interest's complaint.

It is so ORDERED.²


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

¹We do not address real parties in interest's argument concerning the refiling of their medical malpractice claims under NRS 11.500. This issue was not raised in the district court, and we decline to exercise our discretion to consider it in the first instance in this writ petition.

²In light of this order, we deny as moot the January 6, 2010, motion for a stay filed by petitioners Janet Wheble, PA-C, and Janet Wheble, PAC, Ltd.

cc: Hon. Jessie Elizabeth Walsh, District Judge
John H. Cotton & Associates, Ltd.
Lewis Brisbois Bisgaard & Smith, LLP
Marquis & Aurbach
Eighth District Court Clerk