

IN THE SUPREME COURT OF THE STATE OF NEVADA

YELLOW CAB OF RENO, INC.,  
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF WASHOE,  
AND THE HONORABLE JANET J.  
BERRY, DISTRICT JUDGE,

Respondents,

and

KELLY ENCOE AND GRANITE  
CONSTRUCTION,  
Real Parties in Interest.

No. 56435

**FILED**

NOV 10 2010

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges district court orders denying a motion for summary judgment in a tort action and granting a motion to amend the complaint.

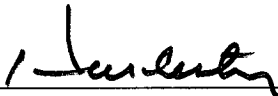
This court will generally not intervene to consider writ petitions challenging district court orders denying motions for summary judgment unless "pursuant to clear authority . . . the district court is obligated to dismiss an action." Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997). Petitioner Yellow Cab of Reno, Inc., asserts that the district court, in denying its motion for summary judgment, ignored clear dispositive statutory and administrative authority, specifically NRS 706.473, NRS 706.475, and NAC Chapter 706, which Yellow Cab argues supports its contention that it has an independent contractor relationship with its cabdrivers, and thus, cannot be liable under a respondeat superior theory. Real parties in interest Kelly Encoe and Granite Construction's answer and attached documentation make clear, however, that these statutes are inapplicable as, under NRS 706.473(1), this authority only applies in counties with

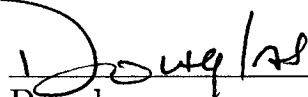
populations less than 400,000, and at the relevant time, 2007, Washoe County's population exceeded 400,000. Accordingly, we conclude that extraordinary relief is not warranted with regard to this issue.

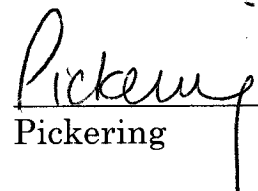
Yellow Cab also argues that the district court abused its discretion in permitting Encoe and Granite to amend their complaint to add a claim for punitive damages, without setting forth its reasoning, on the eve of trial and after undue delay. As pointed out by Encoe and Granite, however, the district court has continued the trial in this matter until September 2011. Having considered these arguments, and concluded that no abuse of discretion occurred in granting leave to amend the complaint, see Connell v. Carl's Air Conditioning, 97 Nev. 436, 439, 634 P.2d 673, 675 (1981) (explaining that leave to amend a complaint will not be set aside unless it is shown that the district court abused its discretion), extraordinary relief is also not warranted regarding the amendment of the complaint.

Accordingly, for the reasons explained above, we deny the petition. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

It is so ORDERED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Janet J. Berry, District Judge  
Law Offices of Steven F. Bus, Ltd.  
Erickson Thorpe & Swainston, Ltd.  
Washoe District Court Clerk