

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL TOM BRICE AND LINDA BRICE,
A MARRIED COUPLE,
Petitioners,

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
DIGBY PRESTON, M.D.,
Real Party in Interest.

No. 56579

FILED

SEP 20 2011

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

ORDER GRANTING PETITION IN PART AND
DENYING PETITION IN PART

This is an original petition for a writ of mandamus or certiorari challenging the district court's partial summary judgment in a medical malpractice action.

Petitioner Paul Brice was injured in a paragliding accident and taken to Renown Regional Medical Center. Real party in interest Digby Preston, M.D., performed spinal surgery on Brice. Three days later, Dr. Preston performed a second spinal surgery on Brice. Thereafter, Brice brought a medical malpractice action against Dr. Preston, alleging that the doctor breached the applicable standard of care when he performed the second surgery.

Dr. Preston filed a motion for partial summary judgment regarding the applicability of NRS 41.503, which contains (1) a \$50,000 damages cap for physicians who render emergency care; (2) a rebuttable presumption that any follow-up care rendered by that physician was not

the cause of the patient's condition; and (3) a rebuttable presumption that, in such follow-up care situations, a \$50,000 damages cap applies. In its order granting Dr. Preston's motion for partial summary judgment, the district court determined that NRS 41.503 was applicable. Brice now petitions this court for a writ of mandamus or certiorari directing the district court to vacate its order. Brice's primary contentions are that genuine issues of material fact precluded application of the damages cap in NRS 41.503 and that the statute violates several provisions of the Nevada Constitution.

Whether Brice's petition warrants our consideration

This court may issue a writ of mandamus to "compel the performance" of a legal duty, NRS 34.160, "or to control a manifest abuse or an arbitrary or capricious exercise of discretion." Cote H. v. Dist. Ct., 124 Nev. 36, 39, 175 P.3d 906, 908 (2008). A writ of certiorari or mandamus may issue only when the petitioner has no plain, speedy, and adequate legal remedy. NRS 34.020; NRS 34.170. We have frequently held that an "appeal is generally an adequate legal remedy . . . preclud[ing] writ relief." Pan v. Dist. Ct., 120 Nev. 222, 223, 88 P.3d 840, 841 (2004). Nevertheless, "under circumstances of urgency or strong necessity, or when an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition," this court may exercise its discretion to entertain a petition. State of Nevada v. Dist. Ct. (Ducharm), 118 Nev. 609, 614, 55 P.3d 420, 423 (2002).

Given the infancy of the litigation underlying this petition, an appeal is not a plain, speedy, and adequate legal remedy, and sound judicial administration favors our consideration of this petition. See International Game Tech. v. Dist. Ct., 124 Nev. 193, 198, 179 P.3d 556,

559 (2008) (indicating that when a case is in its “early stages,” an appeal is not an adequate remedy). Moreover, as Brice suggests, because we have never considered NRS 41.503, the district court’s application of that statute implicates an important issue of law that weighs in favor of our intervention. Accordingly, we conclude that Brice’s petition warrants our consideration.

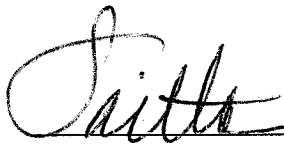
The district court’s application of NRS 41.503

The parties have a fundamental disagreement over the scope of the district court’s order. Brice asserts that the district court determined that pursuant to NRS 41.503, his damages were conclusively capped at \$50,000. In contrast, Dr. Preston contends that the district court merely determined that the rebuttable presumptions contained in NRS 41.503 would apply at trial, not that Brice’s damages were conclusively capped at \$50,000. At oral argument, Dr. Preston conceded that if the district court determined that the \$50,000 damages cap contained in NRS 41.503 applies, then the district court erred because Brice produced evidence that created genuine issues of material fact precluding such a determination.

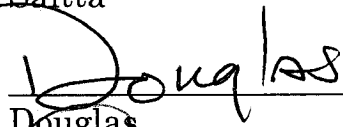
As evinced by the parties’ disagreement, the district court’s order is not a model of clarity. On the one hand, the order signals that it is considering the limited issue of whether the NRS 41.503 rebuttable presumptions would apply to Brice’s action, stating that “[t]he issue here is whether NRS 41.503 is applicable to care given on three days after the injury,” and that Dr. Preston’s care simply “qualif[ies] under NRS 41.503.” On the other hand, the district court’s order makes the sweeping statement that “[Dr. Preston’s] motion for partial summary judgment regarding application of the civil liability cap found in NRS 41.503 is granted.” Due to this ambiguity, we conclude that the district court must

clarify its order regarding the applicability of NRS 41.503.¹ Accordingly, we

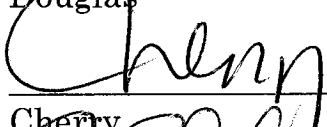
ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to issue an order specifying whether the NRS 41.503 statutory damages cap or the statutory rebuttable presumptions apply to Brice's action.

 _____, C.J.

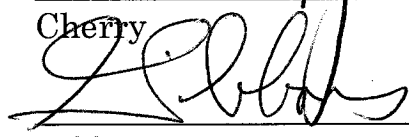
Saitta

 _____, J.

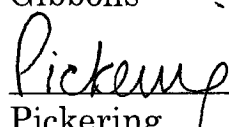
Douglas

 _____, J.

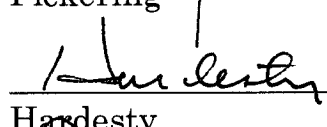
Cherry

 _____, J.

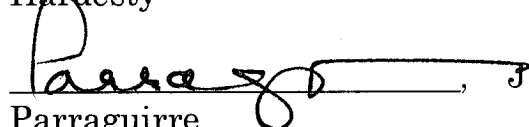
Gibbons

 _____, J.

Pickering

 _____, J.

Hardesty

 _____, J.

Parraguirre

¹In light of our disposition, we need not consider the constitutionality of NRS 41.503, and therefore, we deny the petition as to that issue.

cc: Hon. Brent T. Adams, District Judge
Bradley Drendel & Jeanney
Lemons, Grundy & Eisenberg
Washoe District Court Clerk