

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIA MINOR, INDIVIDUALLY AND AS
NEXT FRIEND OF CANINN
OBERHANSLI-MINOR; AND TRAPPER
MINOR,
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
STEVEN P. ELLIOTT, DISTRICT
JUDGE,

Respondents,

and

RICHARD NEWBOLD, M.D.; TIMOTHY
GENTNER, M.D.; DAVID PETERSEN,
M.D.; RENOWN REGIONAL MEDICAL
CENTER, A NEVADA CORPORATION;
CARSON-TAHOE REGIONAL HEALTH
CARE, A NEVADA CORPORATION
D/B/A CARSON TAHOE REGIONAL
MEDICAL CENTER; AND CARSON
MEDICAL GROUP, A NEVADA
PROFESSIONAL CORPORATION,
Real Parties in Interest.

No. 58375

FILED

MAY 26 2011

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for extraordinary relief challenges a district court order bifurcating a medical malpractice action so that liability and damages are tried separately. Trial is scheduled to begin on June 6, 2011. This court directed an expedited supplement, answer, and reply, which were all timely filed.

Mandamus is available to correct an arbitrary and capricious exercise of discretion when no plain, speedy, or adequate remedy at law

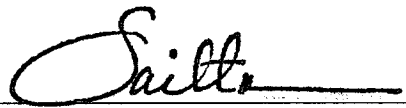
exists. NRS 34.170; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). The decision whether to bifurcate trial rests in the district court's sound discretion. Verner v. Nevada Power Co., 101 Nev. 551, 706 P.2d 147 (1985). Bifurcation may be appropriate when considerations of convenience, judicial economy, and the avoidance of prejudice would be served. NRCP 42(b).

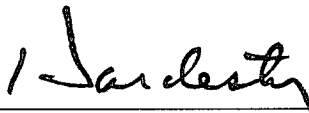
Here, the district court erred in its interpretation and application of this court's opinion in Verner. In particular, the district court found no prejudice, as it concluded that if it failed to "bifurcate the issue of liability from the issue of damage [petitioners] could use evidence of the extent of [the child's] injuries to unfairly play to the jury's passions." But "as this court has stated numerous times, we presume that a jury will follow jury instructions." Glover v. Dist. Ct., 125 Nev. ___, ___, 220 P.3d 684, 709 (2009). On the other hand, petitioners have demonstrated that they will suffer severe prejudice from the trial's bifurcation because certain experts will not be available to travel to Reno twice. In no way, then, could bifurcation result in the avoidance of prejudice.

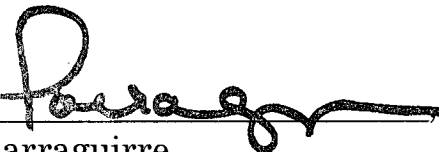
Ordinarily, this is not an appropriate issue for writ relief, however, application of an incorrect legal standard results in an abuse of discretion. Staccato v. Valley Hospital, 123 Nev. 526, 530 170 P.3d 503, 506 (2007). In this case, the district court manifestly abused its discretion in bifurcating the trial. To avoid the prejudice to petitioners of being unable to present their case because of witness unavailability and the resulting necessity of a new trial, we conclude that our intervention is warranted and therefore grant the petition. See International Game Tech. v. Dist. Ct., 124 Nev. 193, 197-98, 179 P.3d 556, 559 (2008) (noting

that judicial economy is properly considered in determining whether writ relief is warranted). Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order bifurcating the trial in the underlying action.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Bowen, Hall, Ohlson & Osborne
Carroll, Kelly, Trotter, Franzen & McKenna
John H. Cotton & Associates, Ltd.
Lauria Tokunaga Gates & Linn, LLP
Lemons, Grundy & Eisenberg
Piscevich & Fenner
Washoe District Court Clerk