

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35389

ROGER M. SIMON, M.D., INDIVIDUALLY
AND AS AN AGENT FOR RETINA
CONSULTANTS OF NEVADA, A NEVADA
CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE NANCY M. SAITTA,
DISTRICT JUDGE,

Respondents,

and

ANYA S. DUKE,

Real Party in Interest.

FILED

FEB 23 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
J. Richards
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying petitioner's motion for summary judgment and an order denying petitioner's motion in limine to exclude an expert witness.


The underlying action concerns a medical malpractice claim brought by the real party in interest, Anya S. Duke, against petitioner Roger M. Simon, M.D. On February 5, 1999, the district court denied Dr. Simon's motion in limine to exclude Duke's sole expert witness, William R. Thornton, M.D., from testifying. On October 11, 1999, Dr. Simon moved for summary judgment, on the basis that Dr. Thornton's deposition testimony failed to show Dr. Simon was negligent. According to proper person documents received by this court, trial in this matter was scheduled to begin on November 16, 1999.¹


¹Although the real party in interest was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from the real party in interest.

On November 16, 1999, the district court denied Dr. Simon's motion for summary judgment. On November 19, 1999, the court granted Dr. Simon's ex parte motion for a stay of trial so that he could file and pursue this writ petition. Dr. Simon filed this petition on December 28, 1999.²

Having considered this petition for a writ of mandamus, we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. See State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983); Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997) (stating that this court will not exercise its discretion to review writ petitions challenging orders denying motions for summary judgment except in rare and limited circumstances). Although Dr. Thornton's expert testimony in support of Duke's cause of action is marginal, and while the district court may revisit the admissibility of some or all of Dr. Thornton's conclusions at trial, we conclude that the district court was not clearly compelled to enter summary judgment. Accordingly, we deny this petition. See NRAP 21 (b).

It is so ORDERED.


_____, C.J.
Rose


_____, J.
Maupin


_____, J.
Becker

cc: Hon. Nancy M. Saitta, District Judge
Alverson Taylor Mortensen Nelson & Sanders
Anya S. Duke
Clark County Clerk

²We observe that the district court, by first denying the motion in limine to exclude Dr. Thornton as an expert witness and then by denying the summary judgment motion, twice expressed its view that Duke should be allowed to proceed with her action. It was therefore inconsistent and unwarranted for the district court to grant a stay of the imminent trial when it was not inclined to grant summary judgment.