

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS ROSS TETZLAFF, M.D.;
BRIAN THONG VOVAN, M.D.; BARRY
STEPHEN FRANK, M.D.; AND GIOLA
& ASSOCIATES, LTD. D/B/A
PEDIATRIC ACUTE CARE, INC. A/K/A
CHILDREN'S ACUTE CARE A/K/A
CHILDREN'S ACUTE CARE, INC.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JERRY A. WIESE, DISTRICT JUDGE,
Respondents,

and

NYIESHA COSTA, INDIVIDUALLY
AND AS NATURAL MOTHER OF
NIKHELAI COSTA; THE ESTATE OF
NIKHELAI COSTA; SUMMERLIN
HOSPITAL MEDICAL CENTER, LLC
D/B/A SUMMERLIN HOSPITAL
MEDICAL CENTER; CHW NEVADA
IMAGING COMPANY, LLC D/B/A
NEVADA IMAGING CENTERS; YU
TIAN, M.D., P.C.; AND YU TIAN, M.D.,
Real Parties in Interest.

No. 59556

FILED

MAR 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingorsoll*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS


This original petition for a writ of mandamus challenges a district court order denying petitioners' motion to dismiss a complaint in a medical malpractice action.


A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. NRS

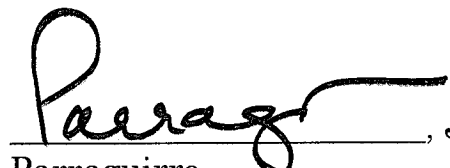
34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

After considering the parties' arguments and supporting documents, we conclude that writ relief is not warranted because the affidavit petitioners challenge satisfies NRS 41A.071's requirements and purpose. NRS 41A.071 (requiring an affidavit from a medical expert that supports the allegations contained in the action); Washoe Med. Ctr. v. Dist. Ct., 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) (explaining that NRS 41A.071's "purpose is 'to lower costs, reduce frivolous lawsuits, and ensure that medical malpractice actions are filed in good faith based upon competent expert medical opinion'" (quoting Syzdel v. Markman, 121 Nev. 453, 459, 117 P.3d 200, 204 (2005)). Accordingly, we

ORDER the petition DENIED.¹


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Jerry A. Wiese, District Judge
Mandelbaum, Ellerton & McBride
Eglet Wall
Hall Prangle & Schoonveld, LLC/Las Vegas
John H. Cotton & Associates, Ltd.
Eighth District Court Clerk

¹In light of this decision, petitioners' motion for a stay of the underlying proceedings is denied.