

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENEA GOODHEARDT, APN; ROSLYN WEINGARTEN, M.D.; GEORGES TANNOURY, M.D., P.C. D/B/A SPECIALTY MEDICAL CENTER; AND MICHAEL REINER, M.D.,

Petitioners,

vs.

THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE; AND KIMBERLY A. WANKER, DISTRICT JUDGE,

Respondents,

and

MARCIA CIARIMATARO; AND CARLO CIARIMATARO,

Real Parties in Interest.

No. 60441

FILED

APR 23 2012

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

ORDER DENYING PETITION FOR WRITS OF MANDAMUS AND PROHIBITION

This original petition for writs of mandamus and prohibition challenges a district court order denying a motion in a discovery dispute in a medical malpractice action.

Petitioners noticed the deposition of real parties in interest's expert witness, but failed to pay the witness's fee prior to the deposition, as requested by the witness. As a result, the witness did not attend the deposition. Petitioners then moved the district court to strike the expert as a witness at trial, or, alternatively, to extend the discovery deadlines so that they could proceed with the deposition. The district court denied the motion, and petitioners now seek writs of mandamus and prohibition to compel the district court to strike the witness or permit the deposition.


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. International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); NRS 34.160. This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court’s jurisdiction. NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Writ relief is generally not available, however, when the petitioners have a plain, speedy, and adequate remedy at law. See NRS 34.170; NRS 34.330; International Game Tech., 124 Nev. at 197, 179 P.3d at 558. Moreover, it is within our discretion to determine if a writ petition will be considered. Smith, 107 Nev. at 677, 818 P.2d at 851. Petitioners bear the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Because discovery matters are within the sound discretion of the district court, see Matter of Adoption of Minor Child, 118 Nev. 962, 968, 60 P.3d 485, 489 (2002), writ relief is generally only appropriate to review discovery orders in exceptional situations. See Valley Health System v. Dist. Ct., 127 Nev. ___, ___, 252 P.3d 676, 679 (2011).

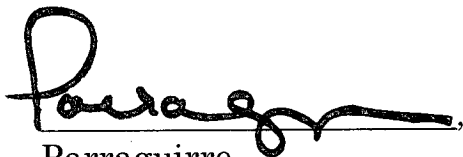
Although petitioners contend that they did not prepay the required fee because the expert never forwarded them a tax form that they needed to have in order to pay him, nothing in petitioners’ supporting documents demonstrates that they presented this argument to the district court. Cf. Mason v. Cuisenaire, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006) (providing that a party’s failure to raise an argument in the district court generally precludes the party from presenting it on appeal). Regardless,

assuming that the expert failed to provide petitioners with a necessary form, petitioners knew that the expert required prepayment of his fee, but they apparently failed to follow up with him when they did not receive the form or confirm that the expert would attend the deposition without prepayment of his fee. In light of petitioners' failure to prepay the requested fee, we conclude that the district court did not abuse its discretion by denying petitioners' motion to strike the witness or extend the discovery deadlines. See Matter of Adoption of Minor Child, 118 Nev. at 968, 60 P.3d at 489. Accordingly, we deny the petition. NRAP 21(b)(1).

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Kimberly A. Wanker, District Judge
John H. Cotton & Associates, Ltd.
Stovall & Associates
Nye County Clerk