

IN THE SUPREME COURT OF THE STATE OF NEVADA

AISHA ASIF, M.D.,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
VALORIE J. VEGA, DISTRICT JUDGE,  
Respondents,

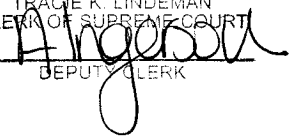
and

JUSTIN LANCE REA, INDIVIDUALLY;  
AND CHRISTEN NELSON REA,  
INDIVIDUALLY AND AS THE  
REPRESENTATIVE OF THE ESTATE  
OF RILEY DEANNA REA,  
Real Parties in Interest.

No. 62247

FILED

JAN 17 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges district court orders denying a motion to dismiss 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.” International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (citations omitted); see NRS 34.160. It is within this court’s discretion to determine whether a writ petition will be considered. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioner bears the burden of demonstrating that this court’s extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

In this case, petitioner argues that the plaintiffs' NRS 41A.071 affidavit is deficient. NRS 41A.071 provides:

If an action for medical malpractice or dental malpractice is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit, supporting the allegations contained in the action, submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged malpractice.

First, citing Orcutt v. Miller, 95 Nev. 408, 411, 595 P.2d 1191, 1193 (1979), petitioner argues that the affidavit must "support[] the allegations" by stating the standard of care, the doctor's conduct that fell below the standard of care, and that the doctor's conduct was the cause of the injuries suffered. Second, citing Staccato v. Valley Hospital, 123 Nev. 526, 531, 170 P.3d 503, 506 (2007), petitioner argues that the person submitting the affidavit was not qualified as an expert and that emergency medicine is not substantially similar to pediatric emergency medicine.


NRS 41A.071 "governs the threshold requirements for initial pleadings in medical malpractice cases, not the ultimate trial of such matters," and must be liberally construed. Borger v. Dist. Ct., 120 Nev. 1021, 1028, 102 P.3d 600, 605 (2004); see also Washoe Med. Ctr. v. Dist. Ct., 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) ("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." (quotation marks omitted)). Under NRS 41A.071, a doctor's affidavit must support the allegations of a complaint; at the pleading stage, it need not meet the requirements of Orcutt to withstand summary judgment. Moreover, the expert qualifications stated in NRS

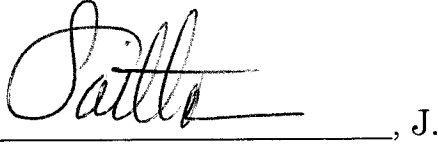
41A.071 are that the doctor must practice “in an area that is substantially similar to the type of practice engaged in at the time of the alleged malpractice.” The qualifications of a medical expert witness for summary judgment or trial under Staccato and NRS 50.275 are distinct from, and do not apply to, the affidavit required by NRS 41A.071. In this case, the real parties in interest submitted an affidavit from a doctor in the area of “emergency medicine.” This satisfies NRS 41A.071’s requirements and purpose.

We have considered the petition and appendix filed in this matter,<sup>1</sup> and conclude that petitioner has not demonstrated that our intervention by way of extraordinary relief is warranted. Accordingly, we

ORDER the petition DENIED.

  
Gibbons

  
Douglas

  
Saitta

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<sup>1</sup>Sunrise Hospital and Medical Center, Arlita Hidalgo, RN, and Robert Kilpatrick, M.D., defendants in the underlying district court action, have filed “limited joinders” to this writ petition. Sunrise Hospital, Nurse Hidalgo, and Dr. Kilpatrick, however, are not parties to the original writ petition filed by petitioner Aisha Asif, M.D., because they were not named as petitioners or real parties in interest. Thus, as nonparties, they cannot file “joinders” to Dr. Asif’s writ petition. If Sunrise Hospital, Nurse Hidalgo, or Dr. Kilpatrick wish to challenge the district court’s order, they may file separate petition(s) for extraordinary writ relief in accordance with NRAP 21. Accordingly, we strike from the record in this case Sunrise Hospital’s and Nurse Hidalgo’s limited joinder, filed on January 9, 2013, and Dr. Kilpatrick’s limited joinder filed on January 10, 2013.

cc: Hon. Valorie J. Vega, District Judge  
Mandelbaum, Ellerton & McBride  
Baker Law Offices  
Hall Prangle & Schoonveld, LLC/Las Vegas  
Eighth District Court Clerk