

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOMINIC CAMERLENGO,

No. 35803

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE NANCY A. BECKER, FORMER DISTRICT JUDGE, THE HONORABLE JAMES A. BRENNAN, SENIOR JUDGE, AND THE HONORABLE VALORIE J. VEGA, DISTRICT JUDGE.

**FILED**

FEB 06 2001

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

Respondents,

And

STANLEY HYMAN, FARMERS INSURANCE EXCHANGE, TRUCK INSURANCE EXCHANGE, FIRE INSURANCE EXCHANGE, MID-CENTURY INSURANCE COMPANY, FARMERS NEW WORLD LIFE INSURANCE CO., FARMERS INSURANCE GROUP OF COMPANIES, CAROLYN CAMERLENGO, AND RHONDA HAND A/K/A RHONDA DESPAIN,

Real Parties in Interest.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus. Petitioner Dominic Camerlengo asks this court to issue a writ compelling the district court to unseal confidential trial transcript records. Because we conclude that the district court has no duty to unseal the records in this case and did not manifestly abuse its discretion in sealing the records, we must deny the petition.

Factual background

On December 12, 1995, Dominic Camerlengo and his wife Carolyn brought suit against the real parties in interest, asserting eleven claims based on alleged sexual

harassment by co-defendant Stanley Hyman. Dominic and Carolyn divorced on April 23, 1997.<sup>1</sup>

On November 25, 1997, following consolidation of the case with a separate suit brought by Dominic and real party in interest Rhonda Hand, the defendants filed a motion for summary judgment against all the plaintiffs. On February 5, 1998, the district court granted partial summary judgment against Dominic but allowed the claims of the remaining plaintiffs to proceed. Accordingly, the court ordered judgment entered against Dominic in favor of the defendants. The court did not, however, direct the entry of final judgment as to Dominic's claim.<sup>2</sup>

On May 5, 1998, the district court denied Dominic's motion to reconsider the court's order entering judgment. Dominic immediately appealed the district court's decision to this court. On May 11, 1999, this court dismissed the appeal on jurisdictional grounds, holding that, because the district court did not adjudicate the rights and liabilities of all parties or claims of the underlying suit and did not certify

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<sup>1</sup>Apparently pursuant to the divorce decree, Dominic caused a lien to be created on April 29, 1998, against the judgment in the litigation against co-defendant Hyman. The terms of the decree are unknown, however, because Dominic has failed to submit a copy of the divorce decree with the petition.

<sup>2</sup>NRCP 54(b) requires in pertinent part:

[W]hen multiple parties are involved [in an action], the court may direct the entry of a final judgment as to one . . . of the parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims . . . of fewer than all the parties shall not terminate the action as to any of the claims or parties.

its order as final pursuant to NRCP 54(b), the order was not an appealable judgment under NRAP 3A(b).

Meanwhile, the remaining party litigants -- Rhonda Hand, Carolyn Camerlengo, and defendants -- went to trial. Before the trial concluded, the parties reached a settlement agreement. On April 30, 1998, outside the presence of the jury, counsel described the terms of the settlement to the court. Pursuant to the parties' request, the court recorded the settlement under seal, sealed the trial transcript, and on May 18, 1998, dismissed the case with prejudice.

On September 9, 1998, Dominic filed a motion with the district court to unseal the trial records, claiming that he had a right to any monies that Carolyn received pursuant to the settlement agreement. The district court denied the motion on December 15, 1998, concluding that Dominic did not have standing to bring the motion.

On March 20, 2000, Dominic petitioned this court to issue a writ of mandamus ordering the district court to unseal the trial transcript.

#### DISCUSSION

1. At common law, every person had a right to inspect public judicial records, provided he or she had an interest in the matters to which the records related.<sup>3</sup> This common law right has been superseded by statute. NRS 239.010(1) now provides a broader right of access:

All public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be

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<sup>3</sup> Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978) (discussing history of the common law right to inspect); Mulford v. Davey, 64 Nev. 506, 509, 186 P.2d 360, 361 (1947) (citing State v. Grimes, 29 Nev. 50, 73, 84 P. 1061, 1068 (1906)).

confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records.

Under the statute, "records" includes transcripts of judicial proceedings.<sup>4</sup> At the same time, the statute exempts public records "otherwise declared by law to be confidential" from the right of inspection. To qualify for this exemption, records must be subject to a law that expressly declares that such public records are confidential.<sup>5</sup> Since no Nevada authority expressly declares that trial proceedings or private settlement agreements are confidential as a matter of law, we conclude that, by its express terms, the statute permits public inspection of the sealed documents.

But our inquiry does not end there. While the language of NRS 239.010 "mandates unlimited disclosure of all public records," the statutory right of access to judicial records is not absolute.<sup>6</sup> Every court has an inherent supervisory power over its own records and files,<sup>7</sup> and may deny inspection of those records when the public interests favoring access are outweighed by interests favoring restricting access.<sup>8</sup>

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<sup>4</sup>See Mulford, 64 Nev. at 509, 186 P.2d at 361. But see Whitehead v. Comm'n on Jud. Discipline, 111 Nev. 70, 84, 893 P.2d 866, 874 (1995) (suggesting in dictum that statute does not apply to court judicial records).

<sup>5</sup>See Donrey of Nevada v. Bradshaw, 106 Nev. 630, 634, 798 P.2d 144, 147 (1990).

<sup>6</sup>Id.

<sup>7</sup>See Whitehead at 104-05, 893 P.2d at 887 (citing State Ex Rel. Bilder v. Township of Delavan, 334 N.W.2d 252 (Wis. 1983)).

<sup>8</sup>See Donrey, 106 Nev. at 634-35, 798 P.2d at 147.

Here, the record is silent as to what factors the district court balanced in exercising its discretion to seal the trial transcript. Nevertheless, we conclude that the trial court did not abuse its discretion to seal the settlement and trial transcript because the confidentiality of these records furthers important public policy interests. First, private compromise is favored in the law.<sup>9</sup> Public disclosure of the terms of settlement would have the effect of discouraging subsequent parties from negotiating and settling disputes.

Second, the sealing of the transcript had the effect of avoiding injury to the litigants' privacy. There is no indication in the record that the courtroom discussion of the terms of the settlement had any public purpose. We therefore conclude that the public interest in unsealing the settlement and trial transcript is de minimis.

We conclude that the district court did not manifestly abuse its discretion to find that these important policies outweighed the public interests favoring access in this case.

2. Relying on Smith v. Emery,<sup>10</sup> Dominic contends that his May 5, 1998, appeal from the district court's summary judgment order divested the district court of jurisdiction over the ongoing litigation, at least until this court adjudicated the appeal. Dominic argues that, because his notice of appeal stayed the district court proceedings, the court's sealing of the trial transcript is void.

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<sup>9</sup>See Hansen v. Collett, 79 Nev. 159, 168, 380 P.2d 301, 305 (1963); see also NRAP 16(b) (requiring that documents prepared by counsel or judge in furtherance of a settlement conference shall not be available for public inspection).

<sup>10</sup>109 Nev. 737, 856 P.2d 1386 (1993).

In Smith, we held that a timely appeal of a final order divests jurisdiction in the district court and vests jurisdiction in the supreme court. Accordingly, Smith does not apply here. Jurisdiction over Dominic's case never vested in this court because the summary judgment order from which he appealed was not a final, appealable judgment.

Furthermore, Dominic's argument must fail because the district court did not certify the summary judgment order as a final judgment pursuant to NRCP 54(b). In the absence of certification in a multiparty action, an order of summary judgment against one party "shall not terminate the action as to any of the claims or parties."<sup>11</sup> Accordingly, NRCP 54(b), by its terms, vested the district court of ongoing jurisdiction in the underlying litigation.

For these reasons, we conclude that the district court had jurisdiction to seal the records.

#### CONCLUSION

This court issues writs of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,<sup>12</sup> or to control an arbitrary or capricious exercise of authority.<sup>13</sup> Because the district court has an inherent supervisory power over its own records, we conclude that it has no duty to unseal the trial transcript. We also conclude that the district court did not manifestly abuse its discretion in sealing the records. Since Dominic has failed to demonstrate that extraordinary relief is

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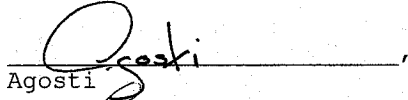
<sup>11</sup>NRCP 54(b).

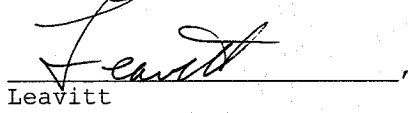
<sup>12</sup>See NRS 34.160.

<sup>13</sup>See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

warranted in this matter, we deny the petition for a writ of mandamus.

  
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Shearing J.

  
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Agosti J.

  
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Leavitt J.

cc: Hon. James A. Brennan, Senior Judge  
Attorney General  
Benjamin B. Childs  
Law offices of Gus W. Flangas  
Rawlings Olson Cannon Gormley & Desruisseaux  
Clark County Clerk