

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY CELLULAR, INC., A NEVADA  
CORPORATION, AND CELLULAR WEST, A  
NEVADA CORPORATION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, AND THE  
HONORABLE GARY L. REDMON, DISTRICT  
JUDGE,

Respondents,

and

ALLTEL COMMUNICATIONS,

Real Party in Interest.

No. 36048

**FILED**

APR 06 2001

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging the district court's order compelling arbitration and denying petitioners' motion to declare the arbitration provision void.

Petitioners contend that the arbitration provision was void at its inception under common law because it prospectively waived liability for punitive damages, thereby insulating Alltel Communications from meaningful liability for fraud, oppression and malice. Petitioners further argue that the arbitration provision is void because it invalidates their right to seek the statutory relief set forth in NRS 42.005 -- punitive damages -- thereby effectively undermining Nevada's public policy to deter potential tortfeasors through punitive damage awards. Petitioners assert that the existence of the underlying contract does not necessarily foreclose their tort claims (and any attendant punitive damage awards), citing cases where tort claims were not restricted merely because the relationship between the parties was originally initiated by

contract. Petitioners also cite NRS 38.035, which allows an arbitration provision to be revoked "upon such grounds as exist at law or in equity for the revocation of any contract."

This court may issue a writ of mandamus to enforce "the performance of an act which the law especially enjoins as a duty resulting from an office . . . or to compel the admission of a party to the use and enjoyment of a right . . . to which he is entitled and from which he is unlawfully precluded by such inferior tribunal."<sup>1</sup> This court has original jurisdiction to issue writs of mandamus.<sup>2</sup> "Mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered."<sup>3</sup> An order compelling arbitration is not appealable and therefore petitioners appropriately seek extraordinary relief by way of a writ of mandamus.<sup>4</sup>

"[I]n reviewing arbitration agreements, the issue of '[w]hether a dispute is arbitrable is essentially a question of construction of contract.' As such, 'the reviewing court is obligated to make its own independent determination on this issue, and should not defer to the district court's determination.'"<sup>5</sup> "[W]e are hesitant to deprive the parties of the benefits of arbitration they have bargained for, and

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<sup>1</sup>NRS 34.160; see also Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>2</sup>See Nev. Const. art. 6, § 4.

<sup>3</sup>Kindred v. District Court, 116 Nev. \_\_\_, \_\_\_, 996 P.2d 903, 906-07 (2000) (citations omitted).

<sup>4</sup>Id. at \_\_\_, 996 P.2d at 906 (citations omitted).


<sup>5</sup>Id. at \_\_\_, 996 P.2d at 907 (quoting Clark Co. Public Employees v. Pearson, 106 Nev. 587, 590, 798 P.2d 136, 137 (1990)).

arbitration clauses are to be construed liberally in favor of arbitration."<sup>6</sup>

We conclude that the public policy arguments advanced by petitioners are not sufficient to overcome this liberal construction in favor of arbitration, nor to overcome the competing public "policy strongly favoring arbitration where the parties have previously agreed to that method of dispute resolution."<sup>7</sup> On the contrary, the public policy behind dispute resolution through arbitration, especially in terms of the significant benefits of arbitration to the parties involved and to the court system, clearly outweighs any public policy concerns implicated in petitioners' inability to pursue tenuous punitive damage remedies. Accordingly, we conclude that the district court did not err in assessing the validity of the arbitration provision and ordering the parties to submit to arbitration. Because the district court committed no error, a writ of mandamus is not warranted, and we

ORDER the petition DENIED.

  
\_\_\_\_\_  
Young J.

  
\_\_\_\_\_  
Leavitt J.

  
\_\_\_\_\_  
Becker J.

cc: Hon. Allan R. Earl, District Judge  
Nersesian & Sankiewicz  
Jolley Urga Wirth & Woodbury  
Clark County Clerk

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<sup>6</sup>Id.

<sup>7</sup>County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 491, 653 P.2d 1217, 1219 (1982).