

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE MANN AND AMERICAN HARDWARE
MUTUAL INSURANCE COMPANY,

No. 36263

Petitioners,

FILED

vs.

EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE MARK R. DENTON, DISTRICT
JUDGE,

FEB 08 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

Respondents.

And

CAROL BAKER,

Real Party in Interest

ORDER GRANTING PETITION
FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition seeks to compel the district court to grant summary judgment to petitioners and dismiss all causes of action against them. In their petition, Dale Mann and American Hardware Mutual Insurance Company (collectively "American Hardware") contend that the arbitration panel's determination of Carol Baker's damages should be given preclusive effect such that American Hardware is entitled to summary judgment as a matter of law. We agree.

First, we conclude that under the facts presented in this case, our consideration of the petition is warranted.¹

¹See *Smith v. District Court*, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997) (considering a petition for extraordinary
continued on next page . . .

Furthermore, we conclude that a writ of mandamus is the appropriate vehicle for relief.²

American Hardware contends that the private arbitrator's decision here was a ruling that was "on the merits" and "final" such that it could be used by American Hardware to collaterally estop Baker from relitigating the issue of damages in her later underinsured motorist ("UIM") suit. Because the arbitrator's decision found that Baker's damages amounted to less than the tortfeasor's policy limits, American Hardware contends that it is therefore entitled to judgment as a matter of law because its policy with Baker and Nevada law both provide that UIM liability exists only where damages exceed the tortfeasor's available coverage. We agree. A valid and final arbitration award generally has the same effects for collateral estoppel purposes as a judgment of the court.³ In this case, we first note that the arbitration proceeding had the necessary procedural requisites to be

. . . continued

relief where "considerations of sound judicial economy and administration" militate in favor of such petition and "an important issue of law requires clarification").

²See NRS 34.170 (providing that a writ of mandamus will issue where there is not a plain, speedy, and adequate remedy in the ordinary course of law); Smith, 113 Nev. at 1348, 950 P.2d at 283 (issuing a writ of mandamus to compel a district court to enter summary judgment in favor of petitioners); Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981) (stating that 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).

³See Restatement (Second) of Judgments § 84 (1982); Int'l Assoc. Firefighters v. City of Las Vegas, 107 Nev. 906, 823 P.2d 877 (1992) (giving preclusive effect to arbitrator's decision in labor dispute context).

valid.⁴ Next, we conclude that all the requisite elements of collateral estoppel are met so that Baker is estopped from relitigating the issue of damages in her UIM claim.⁵ First, the issue of damages decided by the arbitration panel is identical to the issue of damages necessary to Baker's UIM claim. Second, the arbitration agreement and Baker's actions subsequent to the ruling establish that the arbitration determination is a final adjudication. Finally, Baker is a party to both proceedings. Therefore, giving preclusive effect to the arbitration panel's determination, we conclude that Baker's damages do not exceed the tortfeasor's available policy limits and that American Hardware is entitled to a judgment as a matter of law.⁶

Accordingly, we grant American Hardware's petition for extraordinary relief and order the clerk of the court to

⁴See Restatement (Second) of Judgments § 84 cmt. c (1982) ("When arbitration affords opportunity for presentation of evidence and argument substantially similar in form and scope to judicial proceedings, the awards should have the same effect on issues necessarily determined as a judgment has.").

⁵See *Executive Management v. Ticor Title Ins. Co.*, 114 Nev. 823, 836, 963 P.2d 465, 478 (1998) (collateral estoppel requires that: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; and (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation).

⁶We note that our decisions in *Mann v. Farmers Insurance Exchange*, 108 Nev. 648, 836 P.2d 620 (1992), and *Shaw v. Continental Ins. Co.*, 108 Nev. 928, 840 P.2d 592 (1992), do not control our analysis here. Those cases dealt with the narrow problem of whether exhaustion clauses in UIM policies are enforceable to prevent an injured party from pursuing a UIM claim where the party settled with the tortfeasor's insurance company for less than the available coverage. Here, damages were actually determined by an arbitration panel before Baker pursued her UIM claim.

issue a writ of mandamus compelling the district court to enter summary judgment in favor of American Hardware on Baker's remaining contract and statutory claims.⁷

It is so ORDERED.

Young, J.
Young

Rose, J.
Rose

Becker, J.
Becker

cc: Hon. Mark R. Denton, District Judge
Wieczorek & Associates
Jan Paul Koch
Clark County Clerk

⁷We have reviewed Baker's other arguments and conclude that they lack merit.