

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BECKY A. PINTAR; AND PINTAR
ALBISTON LLP,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JESSIE ELIZABETH WALSH,
DISTRICT JUDGE,

Respondents,

and

AA PRIMO BUILDERS, LLC; BERTRAL
WASHINGTON; AND CHERI
WASHINGTON,
Real Parties in Interest.

No. 70878

FILED

FEB 28 2017

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY *E. Brown*
DEPUTY CLERK

*ORDER GRANTING PETITION
FOR WRIT OF MANDAMUS*

This is an original petition for a writ of mandamus challenging a district court order imposing sanctions under NRS 7.085.

Petitioner Becky Pintar was counsel for real party in interest AA Primo Builders, LLC, in the underlying action, which AA Primo instituted against real parties in interest Bertral and Cheri Washington, alleging that the Washingtons failed to pay for work done under a contract to build a patio and casita on the Washingtons' property.¹ After a trial, the jury ruled in favor of AA Primo but the district court set aside the

¹Petitioner Pintar Albiston LLP is Pintar's law firm.

verdict and granted the Washingtons judgment as a matter of law under NRCF 50, and an appeal of that decision ended in the Washingtons' favor. The district court then ordered Pintar to pay all of the Washingtons' attorney fees and costs as a sanction for knowingly filing and maintaining the underlying action even though it was not well-grounded in fact or law. This writ petition followed. Because Pintar was not a party to the underlying action, mandamus is the appropriate method for her to seek relief from the district court's order.² See *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 131 Nev. ___, ___, 358 P.3d 228, 231 (2015) ("Sanctioned attorneys do not have standing to appeal because they are not parties in the underlying action; therefore, extraordinary writs are a proper avenue for attorneys to seek review of sanctions."); see also NRS 34.170 (providing that a writ of mandamus is available "where there is not a plain, speedy and adequate remedy in the ordinary course of law").

Here, the district court sanctioned Pintar under NRS 7.085(1)(a), which provides that

²While Pintar failed to oppose the motion for attorney fees and costs, the award sought in the original motion—attorney fees and costs against Pintar's client, AA Primo—is outside the scope of this writ petition. And the award at issue in this petition—the personal sanction against Pintar—was not sought in the original motion, but in a procedurally improper "supplement" to that motion filed after the time for opposing the original motion had passed. See EDCR 2.20(i) (discussing supplemental briefs in support of motions). Under the particular circumstances of this case, we conclude that exercising our discretion to consider this petition is warranted despite Pintar's failure to oppose the motion or supplement. See *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (explaining that whether to consider a writ petition is discretionary).

[i]f a court finds that an attorney has . . . [f]iled, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law . . . the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.

In support of its decision to sanction Pintar, the district court found that she knew from the outset of the case that AA Primo was not properly licensed to perform the work it contracted to do and that AA Primo's license did not allow it to enter into subcontracts, enter into a contract for more than \$100,000, or violate certain provisions relating to licensing for contractors. The district court also found that Pintar knew AA Primo's actions exceeding its licensing limits rendered the contract void, making the litigation groundless. Other than the finding regarding Pintar knowing about the license limitations, the district court did not make any findings to support or explain its conclusion that Pintar knew that the contract was void and, thus, that the litigation was not well-grounded in fact or law.

But it is not at all clear on this record that Pintar's knowledge of the license limitations equated to knowledge that the contract was void or that the litigation was groundless. Indeed, the district court denied a motion to dismiss the underlying action, as well as a pre-verdict motion for judgment as a matter of law, which were both based on the argument that the contract was void because AA Primo had exceeded its license limit. The denial of these motions demonstrates that the district court itself did not find the provisions of the agreement exceeding AA Primo's license to necessarily render the contract void and the litigation groundless. See *Watson Rounds*, 131 Nev. at ___, 358 P.3d at 233-34 (noting that the


district court's denial of summary judgment indicated that the court thought there might be sufficient evidence to support the claims in that case). Thus, we cannot conclude that Pintar's knowledge of the license limitations was, on its own, an adequate basis to find that she knowingly maintained groundless litigation.

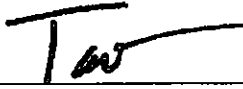
By this decision, we do not entirely discount the possibility that, at some point in the underlying case, Pintar may have become aware that AA Primo's claims were groundless. But, as written, the district court's findings do not support the conclusion that she knowingly maintained groundless claims, and thus, we conclude that writ relief is warranted. *See id.* at ___, 358 P.3d at 234 (granting a petition for a writ of mandamus where the district court failed to "set forth reasoning and factual findings to support its decision" imposing sanctions under NRS 7.085).


Accordingly, we grant the petition and direct the clerk of the court to issue a writ of mandamus instructing the district court to vacate the portion of its April 22, 2016, order holding Pintar liable for the Washingtons' attorney fees and costs in the amount of \$257,751.27. Nothing in this order prevents the Washingtons from renewing their motion for sanctions against Pintar. But if the district court again sanctions Pintar, it must set forth adequate

reasoning and factual findings to support its decision.³

It is so ORDERED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elizabeth Gonzalez, Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department Ten
Pintar Albiston LLP
Parker, Nelson & Associates
Eighth District Court Clerk

³In the event that the court again imposes sanctions, we note that any fees and costs imposed as a sanction must be specifically tied, through findings, to Pintar's wrongful behavior at a specifically identified point in the litigation, as NRS 7.085(1) limits sanctions under that statute to "the *additional* costs, expenses and attorney's fees reasonably incurred because of [the attorney's maintenance of the groundless action]." (Emphasis added).

⁴We note that the Honorable Jessie Elizabeth Walsh recently retired. Thus, the writ issued by the clerk of the court pursuant to this order shall be directed to Department Ten of the Eighth Judicial District Court. This writ shall further provide that, in the event that this case has been, or is subsequently, reassigned from Department Ten, the directives contained in this order shall inure to the district court judge assigned to preside over this case.