

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SIDNEY STAFFORD; AND PULTE  
BUILDING SYSTEMS, LLC,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
DOUGLAS SMITH, DISTRICT JUDGE,  
Respondents,

and

REBECCA MAGRUDER,  
Real Party in Interest.

No. 77873-COA

FILED

MAY 15 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER GRANTING IN PART PETITION  
FOR WRIT OF MANDAMUS OR PROHIBITION*

This is an original petition for a writ of mandamus or prohibition challenging, as relevant here, a district court order granting summary judgment in a torts action.<sup>1</sup>

Real party in interest Rebecca Magruder filed a complaint against petitioners Sidney Stafford and Pulte Building Systems, LLC, alleging negligence related to a motor vehicle collision between Magruder and Stafford. The collision took place while Stafford was making a right turn and Magruder's vehicle was to the right of Stafford's. This matter previously went to trial, but a new trial was granted due to testimony from petitioners' accident reconstruction expert witness, which the district court

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<sup>1</sup>The petition also sought relief regarding an order striking petitioners' expert witness; however, that portion of the petition was previously denied by order dated April 17, 2019, and is therefore, not addressed herein.

determined should have been excluded. The grant of a new trial and the exclusion of the expert witness were upheld on appeal. *Stafford v. Magruder*, Docket No. 66415-COA (Order of Affirmance, July 15, 2016). Subsequently, Magruder moved for summary judgment as to liability. The district court granted the motion over petitioners' opposition. This petition followed.

This court has original jurisdiction to grant a writ of mandamus, and issuance of such extraordinary relief is solely within this court's discretion. See Nev. Const. art. 6, § 4; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). 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 a manifest abuse or an arbitrary or capricious exercise of discretion. See NRS 34.160; *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011). In that regard, this court looks to whether the district court misinterpreted or misapplied a law or otherwise reached a decision that was founded on prejudice or contrary to the evidence or rule of law. See *id.* at 931-32, 267 P.3d at 780 (explaining when a district court will be deemed to have manifestly abused its discretion or otherwise exercised it in an arbitrary or capricious manner). Here, having considered the petition and supporting documentation, we elect to exercise our discretion and consider the petition for a writ of mandamus in the interest of judicial economy and to control a manifest abuse of discretion. See *Smith*, 107 Nev. at 677, 818 P.2d at 851; see also *Armstrong*, 127 Nev. at 931, 267 P.3d at 779.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other

evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.


In the instant matter, the district court found that, because Stafford testified that he did not see Magruder's vehicle until after the accident and he could not state how the accident occurred, there were no other witnesses to the accident, and petitioners' accident reconstruction expert was stricken, there was no evidence to dispute Magruder's testimony as to how the accident took place. As such, the district court concluded there was no genuine issue of material fact regarding how the accident took place. However, this ignores evidence, in the form of Stafford's testimony, regarding the events leading up to the collision, which demonstrates that there are material issues of fact which preclude entry of summary judgment.


Most notable, as the collision occurred while Stafford was making a right turn, is the disputed material fact of whether Stafford had his right or left turn signal on. If the jury believes that Stafford had his right turn signal on, as he testified, as opposed to his left, as Magruder testified, it could assign fault to Magruder for moving to pass Stafford on his right side when he prepared to make the right turn and/or while he made the right turn. Additionally, it is undisputed that the section of the road where the collision occurred was not marked as two lanes, but Magruder testified that she treated it as two lanes and Stafford testified he treated as a single lane. Therefore, there is a dispute as to whether the road


should have been treated as one or two lanes and the jury could find fault on Magruder's part if it finds it was unreasonable for her to treat the stretch of road as two lanes. Because these factual issues, among others, are disputed, they are properly left for the jury to resolve, and summary judgment was therefore improper. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *see also Brascia v. Johnson*, 105 Nev. 592, 595, 781 P.2d 765, 767 (1989) ("[Nevada has a] stated policy that issues of negligence are properly resolved by a jury.").

Given the foregoing, we conclude that the district court manifestly abused its discretion in granting summary judgment as to liability. *See Armstrong*, 127 Nev. at 931, 267 P.3d at 779. Accordingly, we grant Stafford and Pulte's petition in part and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order granting Magruder's motion for partial summary judgment.<sup>2</sup>

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>2</sup>In light of this order, we deny as moot the petitioners' motion for stay.

cc: Hon. Linda M. Bell, Chief Judge, Eighth Judicial District Court  
Department Eight, Eighth Judicial District Court  
Koeller Nebeker Carlson & Haluck, LLP/Las Vegas  
Richard Harris Law Firm  
Eighth District Court Clerk