

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY WASSNER; AND CATHY
WASSNER,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
NANCY L. ALLF, DISTRICT JUDGE,
Respondents,

and

RICHARD A. OSHINS; AND STEVEN J.
OSHINS,
Real Parties in Interest.

No. 78211-COA

FILED

NOV 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

This original petition for a writ of mandamus or prohibition challenges the district court's order granting a motion to compel discovery. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Petitioners Gary and Cathy Wassner (collectively, Wassner) and real parties in interest Richard and Steven Oshins (collectively, Oshins) are each co-trustees of the Ruth S. Oshins Revocable Family Trust (the Trust). For approximately nine years, Ruth Oshins lived with Wassner in New York. After Ruth's passing, concerns arose about Wassner's management of the Trust. Accordingly, Oshins instituted an action in district court, asserting various claims of breach of loyalty and breach of fiduciary duty. Oshins served Wassner with a request for production, requesting Wassner's federal and state tax returns for the relevant period—2006 to the present. Wassner objected, and Oshins moved the district court

to compel production. After a hearing on the motion, the district court granted the motion to compel, finding the tax returns potentially relevant to the breach of loyalty claims. Furthermore, the district court stated, “[a]nything ordered to be produced will be produced pursuant to [the] stipulated protective order of January 23, 2019.” This petition followed.

We review a district court’s resolution of discovery disputes for an abuse of discretion. *Means v. State*, 120 Nev. 1001, 1007, 103 P.3d 25, 29 (2004). “The scope of discovery in civil actions is limited to matter, not privileged, which is relevant to the subject matter involved in the pending action.” *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 192, 561 P.2d 1342, 1343 (1977) (internal quotation marks omitted); see also NRCP 26(b)(1).¹ Although discovery requests for tax returns are often subjected to “heightened scrutiny,” *Hetter v. Eighth Judicial Dist. Court*, 110 Nev. 513, 519, 874 P.2d 762, 766 (1994), such requests are “clearly appropriate” in many circumstances. *Id.* at 519, 874 P.2d at 765.

Here, the district court determined that Wassner’s tax returns were potentially relevant to the breach of loyalty claims and constrained Oshins’ request to the period in which the alleged breaches occurred—i.e., 2006 to the present. Moreover, the appendices reveal numerous Trust transactions that likely implicate Wassner’s tax returns, including a \$250,000 transfer to Wassner from the Trust, the use of Trust funds to


¹The Nevada Rules of Civil Procedure were amended effective March 1, 2019. See *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Here, the controlling order was filed on February 21, 2019. Therefore, the prior version of the rule is applicable to this petition.

purchase real property, which is titled in Wassner's name, and the alleged misappropriation of Trust funds for Wassner's personal use. The district court also ordered production of the tax returns pursuant to a protective order, indicating that it considered the sensitive nature of the documents.

On this record, we cannot conclude that the district court abused its discretion, as discovery of Wassner's tax returns appears appropriate under the circumstances. Therefore, we conclude that the petitioners have not met their burden of demonstrating that extraordinary writ relief is warranted in this matter. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (explaining that petitioners bear the burden of demonstrating that such extraordinary relief is warranted); *see also Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) ("[T]he issuance of a writ of mandamus or prohibition is purely discretionary with this court."). Accordingly, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Nancy L. Allf, District Judge
Snell & Wilmer, LLP/Las Vegas
Snell & Wilmer, LLP/Reno
Solomon Dwiggin & Freer, Ltd.
Eighth District Court Clerk