

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VERNON BANKS,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
SUSAN JOHNSON, DISTRICT JUDGE,  
Respondents,  
and  
HEBER BENEGAS DIAZ; AND  
CLOVER CABLE OF OHIO, INC.,  
Real Parties in Interest.

No. 80379-COA

**FILED**

JAN 17 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DENYING PETITION FOR WRIT OF MANDAMUS*

This original petition for a writ of mandamus challenges a district court order granting, in part, a motion in limine to exclude expert witness testimony in a personal injury action.

Having reviewed the petition and supporting documentation, we are not persuaded that our extraordinary and discretionary intervention is warranted. *See Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). In particular, the partial exclusion of expert testimony may be challenged on appeal from the final judgment, if petitioner is aggrieved thereby, and petitioner has not met his burden of demonstrating that the decision here fits within the narrow exception under which we may consider a writ petition despite the availability of a legal remedy. NRS 34.170; *Williams v. Eighth Judicial Dist. Court*, 127 Nev. 518, 524, 262 P.3d 360, 364 (2011) (noting that “the decision to admit or exclude expert opinion testimony is discretionary and is not typically subject to review on a petition for a writ of mandamus”); *Pan v. Eighth Judicial Dist.*

*Court*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 843-44 (2004) (providing that petitioner bears the burden of demonstrating that writ relief is warranted and observing that an appeal from a final judgment is generally an adequate legal remedy precluding writ relief).

In this case, the district court's order does not foreclose the plaintiff's expert witness, Dr. Smith, from testifying at trial but only imposes certain conditions on his doing so, including that he lay a detailed foundation for his opinions. We note that, as a general matter, hedonic damages are permitted in Nevada. *See Banks v. Sunrise Hosp.*, 120 Nev. 822, 835-39, 102 P.3d 52, 61-64 (2004). We also note that experts may base their opinions on facts or data not otherwise admissible if the information is of the type reasonably relied upon by experts. *See NRS 50.285(2)*. Further, experts are not required to have personally witnessed or have personal knowledge of every fact upon which their opinions or inferences are based. Rather, they can base opinions on facts or data made known to them at or before the trial. *See NRS 50.285(1)*.

We therefore

ORDER the petition DENIED.<sup>1</sup>

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

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

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

<sup>1</sup>In light of this order, petitioner's motion for stay, which fails to comply with NRAP 27(e)'s emergency motion requirements, is denied as moot.

cc: Hon. Susan Johnson, District Judge  
The Paul Powell Law Firm  
Winner & Sherrod  
Eighth District Court Clerk