

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND LAS VEGAS SANDS,
LLC, A NEVADA LIMITED LIABILITY
COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KATHLEEN E. DELANEY, DISTRICT
JUDGE,

Respondents,

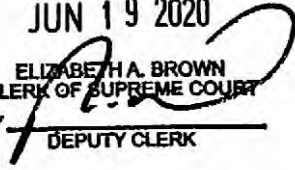
and

JOYCE SEKERA, AN INDIVIDUAL,
Real Party in Interest.

No. 80816-COA

FILED

JUN 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus or prohibition challenging a district court order requiring petitioners to produce unredacted prior incident reports in discovery and refusing to impose requested protections related to those reports.¹

This current petition arises from the same litigation that we previously considered in *Venetian Casino Resort, LLC v. Sekera*, 136 Nev., Adv. Op. 26, ___ P.3d ___ (Ct. App. 2020). Real party in interest, Joyce Sekera, allegedly slipped and fell at the Venetian Resort in Las Vegas. During discovery, Sekera requested unredacted incident reports of slip and

¹The Honorable Bonnie A. Bulla, Judge, voluntarily recused herself from participation in the decision of this matter.

fall accidents from November 2013 to November 2016 that contained the personal information of the Venetian's guests. The Venetian sought a protective order that would allow it to either redact the personal information and/or limit Sekera's ability to show the reports to nonparties. The district court denied its request. The Venetian filed an original petition for a writ of mandamus challenging that ruling, which this court granted due to the district court's failure to consider proportionality, as required by the current version of NRCP 26(b)(1), and for failing to conduct a good cause analysis under NRCP 26(c)(1). *See Venetian*, 136 Nev., Adv. Op. 26, ___ P.3d at ___.

While the prior case was pending before this court, Sekera sought discovery pertaining to additional incident reports. The district court issued another order requiring the Venetian to provide unredacted slip and fall incident reports from November 2011 to November 2016 that occurred in the Grand Lux Rotunda area of the Venetian property.² The Venetian requested a stay from the district court, which was denied. The Venetian then filed this petition for a writ of mandamus or prohibition due to the district court's failure to consider proportionality and issue a protective order. The Venetian also sought a stay of the district court's discovery order, which we granted in March 2020.³

²We note that the district court's March 13, 2020 order involved multiple discovery issues. The Venetian only challenges the order as it pertains to the incident reports. Thus, our order only addresses that issue.

³*Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, Docket No. 80816-COA (Order Directing Answer and Granting Stay, Ct. App., March 27, 2020).

In our prior opinion, we specifically required the district court to consider proportionality and to conduct a good cause analysis with the framework provided therein for the issuance of a protective order. *Venetian*, 136 Nev., Adv. Op. 26, ___ P.3d at ___. Here, regarding the incident reports, the district court did not consider proportionality and did not conduct a good cause analysis as part of its discovery hearing and subsequent order. We conclude writ relief is appropriate and grant the writ of mandamus.⁴ *Humphries v. Eighth Judicial Dist. Court*, 129 Nev. 788, 791, 312 P.3d 484, 486 (2013). The district court must consider the proportionality of the discovery request and apply the framework found in *Venetian Casino Resort, LLC v. Sekera*, 136 Nev., Adv. Op. 26, ___ P.3d ___ (Ct. App. 2020), to determine if a protective order is warranted.⁵ Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

⁴We recognize that writs of prohibition are typically more appropriate for the prevention of improper discovery. *See, e.g., Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228 n.6, 276 P.3d 246, 249 n.6 (2012). A writ of prohibition is the “proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction.” *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *see also* NRS 34.320. Here, we are not concluding that the district court’s discovery order was outside its jurisdiction and thus improper. Instead, we are compelling the district court to perform the analysis that the law requires and controlling an arbitrary exercise of discretion. Thus, mandamus relief is more appropriate, and we deny the Venetian’s alternative request for a writ of prohibition.

⁵Writ relief is discretionary, and in light of our disposition, we decline to address the other issues argued by both parties in this original proceeding. *See Smith*, 107 Nev. at 677, 818 P.2d at 851 (“[T]he issuance of a writ of mandamus or prohibition is purely discretionary with [appellate] court[s].”).

district court to vacate the order compelling discovery only as it pertains to the production of the incident reports and conduct proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao

cc: Chief Judge, Eighth Judicial District Court
Hon. Kathleen E. Delaney, District Judge
Royal & Miles, LLP
Claggett & Sykes Law Firm
The Galliher Law Firm
Eighth District Court Clerk