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. 83600-COA

FILED

MAR 23 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF PROHIBITION

This original petition for a writ of mandamus, or in the alternative, writ of prohibition, challenges a district court's discovery order requiring the disclosure of prior incident reports with certain redactions.

This is the third writ petition to come before us in this case arising from a slip-and-fall at the Venetian Casino Resort in Las Vegas. In 2016, Joyce Sekera slipped and fell on a marble floor inside the Venetian. Sekera filed a complaint in district court alleging liquid on the floor caused her fall. She also alleged that the liquid on the floor coupled with the composition of the floor rendered the area dangerous for use to herself and other patrons. Sekera alleged there had been 73 slip-and-falls on the Venetian's marble floors in the three years prior to her fall. Despite having

notice that its floors were too slippery to be safe for patrons, she alleged, the Venetian had failed to take any precautions to prevent injuries to its guests.

During discovery, Sekera requested prior incident reports related to slip-and-falls at the Venetian for the three years preceding her fall. The Venetian complied but redacted the names, addresses, phone numbers, and other personal information of the individuals involved in the incidents. Sekera objected to the redactions, and the Venetian then moved the discovery commissioner for a protective order to protect its guests' personal information. The discovery commissioner recommended that the reports remain redacted but that Sekera could request the personal information of the individuals involved in incidents similar to hers. The discovery commissioner also recommended that Sekera be ordered not to share the incident reports with anyone "not directly affiliated with [her] litigation."

Sekera objected to the discovery commissioner's recommendations and the district court held a hearing on the matter. The district court "reversed [the discovery commissioner's recommendation] in its entirety." It ruled that the information was relevant and there was no legal basis to grant a protective order to prevent the disclosure of the Venetian's guests' identities. The district court also ruled that there was no legal basis for precluding Sekera from sharing the incident reports with persons not involved in her litigation.

The Venetian filed a petition for a writ of mandamus and/or writ of prohibition with the supreme court seeking to vacate the district court's order. While the Venetian's first petition was still pending, Sekera requested additional incident reports dating back to 1999. The Venetian moved the discovery commissioner for a protective order. The discovery

commissioner recommended the Venetian produce the unredacted incident reports, but only from 2011 onward—a period of five years prior to Sekera's fall. The district court modified the discovery commissioner's recommendation in part, limiting the scope of the incident reports to the Venetian's "Grand Lux rotunda dome area." The Venetian then filed a second petition seeking writ relief.

As to the Venetian's first writ petition, we issued an opinion[1] granting the writ and directing the district court to consider relevance and proportionality as required by NRCP 26(b)(1) and to conduct a good cause analysis under NRCP 26(c)(1) when deciding whether to issue a protective order. We subsequently issued an order[2] granting the Venetian's second writ petition, including the same directions as the prior opinion vis-à-vis the new incident reports the district court had ordered the Venetian to produce.

When the proceedings recommenced in district court, the court held a hearing to modify its discovery order in light of our rulings. The district court again ordered the Venetian to produce incident reports dating back to 2011. It ordered the Venetian to disclose the names and contact information of the guests involved in each incident. The district court also found good cause for a protective order and ordered the Venetian to redact the social security numbers, drivers' license numbers, and "private health information" included in the incident reports. The Venetian filed this petition for writ relief.

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[1]*Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 467 P.3d 1 (Ct. App. 2020).

[2]*Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, No. 80816-COA, 2020 WL 3412109 (Nev. Ct. App. June 19, 2020) (Order Granting Petition for Writ of Mandamus).

We exercise our discretion to consider the Venetian's writ petition

"Because a writ petition seeks extraordinary relief, the consideration of the petition is within our sole discretion." *Dep't of Taxation v. Eighth Judicial Dist. Court*, 136 Nev. 366, 368, 466 P.3d 1281, 1283 (2020). When we decide to consider a discovery order by writ petition, "a writ of prohibition is a more appropriate remedy for the prevention of improper discovery."[3] *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 171 n.5, 252 P.3d 676, 678 n.5 (2011). Nevertheless, under certain circumstances, "a writ of mandamus may be issued to compel the district court to vacate or modify a discovery order." *Okada v. Eighth Judicial Dist. Court*, 131 Nev. 834, 839, 359 P.3d 1106, 1110 (2015). Either writ will issue only "where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330.

The Venetian bears the burden of demonstrating that our intervention by way of extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). We generally only exercise our discretion to review discovery orders through a writ petition under two circumstances: (1) where the challenged order "is one that is likely to cause irreparable harm, such as [(a)] a blanket discovery order, issued without regard to the relevance of the information sought, or [(b)] an order that requires disclosure of privileged information;" or (2) where the writ petition raising a discovery issue implicates "an important issue of law [that] needs clarification and public policy is served by this

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[3]"A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the jurisdiction of the district court." NRS 34.320; *Dep't of Taxation*, 136 Nev. at 368, 466 P.3d at 1283.

court's invocation of its original jurisdiction." *Okada*, 131 Nev. at 839-40, 359 P.3d at 1110 (internal citations omitted).

Here, although the Venetian's petition does not fall cleanly within one of these presumptive categories, the Venetian does not have "a plain, speedy, and adequate remedy" at law as to the district court's discovery order. *See* NRS 34.170; NRS 34.330. If the discovery ordered by the district court is improper, a later appeal would not effectively remedy any inappropriate disclosure of the Venetian's guests' personal information. *See Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228-29, 276 P.3d 246, 249 (2012). Therefore, we exercise our discretion to consider the Venetian's writ petition.

The district court did not clearly abuse its discretion by ordering the Venetian to produce partially redacted incident reports

The Venetian first argues that its guests' privacy interests outweigh Sekera's need for their contact information. It contends that its guests' privacy interest in their contact information is entitled to protection from disclosure under NRCP 26(c). It argues Sekera is required to demonstrate a "compelling need" before she may violate the Venetian's guests' protected privacy interests.[4] Sekera counters that the Venetian has failed to demonstrate that any specific privilege applies to its guests' contact information. She also argues that the guests' privacy interest in their contact information is not protected by the Nevada Constitution, Nevada statute, or Nevada common law.

"Discovery matters are within the district court's sound discretion, and we will not disturb a district court's ruling regarding

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[4]The Venetian provides no authority to show there is a "compelling need" standard in Nevada.

discovery unless the court has clearly abused its discretion." *Club Vista Fin. Servs., LLC*, 128 Nev. at 228, 276 P.3d at 249. Parties are entitled to obtain "discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses." NRCP 26(b)(1). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. In addition to being relevant, the discovery must be "proportional to the needs of the case" considering:

> [(1)] the importance of the issues at stake in the action; [(2)] the amount in controversy; [(3)] the parties' relative access to relevant information; [(4)] the parties' resources; [(5)] the importance of the discovery in resolving the issues; and [(6)] whether the burden or expense of the proposed discovery outweighs its likely benefit.

NRCP 26(b)(1); *see also Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 225 n.8, 467 P.3d 1, 5 n.8 (Ct. App. 2020) (explaining that these factors specifically apply to proportionality). Information obtained in discovery "need not be admissible in evidence to be discoverable." NRCP 26(b)(1).

"The law's basic presumption is that the public is entitled to every person's evidence," *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1546-47 (11th Cir. 1985),[5] and rules of civil procedure strongly favor full discovery whenever possible, *id.* at 1547. District courts are given wide

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[5]Citing *Blackmer v. United States*, 284 U.S. 421, 438 (1932); *see also Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 285 n.2, 357 P.3d 966, 970 n.2 (Ct. App. 2015) ("Where the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings of federal courts interpreting and applying the federal rules are persuasive authority for this court in applying the Nevada Rules.").

discretion in setting the limits of discovery, and a district court's ruling on a discovery matter will only be overturned for a clear abuse of discretion. *See Club Vista Fin. Servs., LLC*, 128 Nev. at 228, 276 P.3d at 249.

Although never specifically addressed in Nevada, some courts appear to agree that there exists a privacy interest in one's contact information. *See, e.g., Punches v. McCarrey Glen Apartments, LLC*, 480 P.3d 612, 622 (Alaska 2021) ("The parties do not dispute that other tenants have an expectation of privacy in their contact information."); *Williams v. Superior Court*, 398 P.3d 69, 84 (Cal. 2017) (explaining with approval that an appellate court had held that employees have a reasonable expectation of privacy in their contact information); *State ex rel. State Farm Mut. Auto. Ins. Co. v. Cramer*, 785 S.E.2d 257, 258 (W.Va. 2016) (contacting non-party policyholders would violate the policyholders' right to privacy). However, there is no bar to the discovery of a non-party's contact information; and, indeed, the disclosure of such information is common in certain contexts. *See, e.g., Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) ("The disclosure of names, addresses, and telephone numbers is a common practice in the class action context."); *Acevedo v. Ace Coffee Bar, Inc.*, 248 F.R.D. 550, 554 (N.D. Ill. 2008) (explaining that courts routinely uphold a plaintiff's right to obtain the contact information of similarly situated employees in collective actions under the Fair Labor Standards Act).

Here, acknowledging the privacy interest the Venetian's guests have in their contact information, the district court nevertheless acted within the wide discretion it is accorded to set the limits of discovery. *See Club Vista Fin. Servs., LLC*, 128 Nev. at 228, 276 P.3d at 249. The court considered both the relevancy and proportionality of Sekera's discovery request and made specific findings as to both. The court ruled that the

Venetian's incident reports, and the contact information of the guests involved in other slip-and-falls, were relevant to the claims and defenses of the case. Specifically, it ruled that that information was "relevant to [the] Venetian's affirmative defense of comparative negligence" and to Sekera's claim for punitive damages. It explained that the individuals who had previously been injured would have information about the facts and circumstances surrounding their falls as well as the condition of the Venetian's flooring at the time of their respective falls. The court then analyzed and set forth specific findings as to each of NRCP 26(b)(1)'s "proportionality factors."

Taken together, these findings support the district court's ruling that Sekera's need for the contact information outweighs any privacy interest in it.[6] The Venetian acknowledges that no Nevada precedent would bar the disclosure of its guests' contact information, and its attempts to analogize this situation to situations addressed in other cases are unpersuasive considering the facts of this case. In light of the foregoing, the district court did not clearly abuse its discretion by ruling that Sekera's need for the Venetian's guests' contact information outweighed the non-party guests' privacy interest preventing such disclosure.[7]

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[6]Although we might not agree with the district court's conclusion that the non-parties have "no expectation of privacy" in the contact information and self-reported injuries given to the Venetian, we nevertheless conclude the district court's ultimate ruling was not a clear abuse of discretion warranting our extraordinary intervention here. *See generally Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (holding that we will affirm the district court if it reaches the correct result, even if for the wrong reason).

[7]Throughout its petition, the Venetian alleges Sekera will share its guests' information with persons not involved in the instant litigation.

The Venetian also argues the district court's order to redact "private health information, such as that provided to responding EMTs" is vague and ambiguous. It argues that the Venetian's incident reports are prepared by employee-EMTs and therefore any information contained therein should be considered "private health information" and should be redacted. Sekera counters that the district court acted within its discretion in directing the Venetian to redact private health information (in addition to social security numbers and driver's license numbers).

Where a district court's order is ambiguous, we may consult the record and proceedings giving rise to that order to construe its meaning. *See Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011). Here, even assuming arguendo that the district court's order regarding the guests' private health information is ambiguous, the district court thoroughly explained the intention behind its order at the hearing. The court explained that Sekera was entitled to the portion of the incident reports where someone told the Venetian that "they fell, hit their knee, or hurt their leg." However, it intended to protect other information given to responding medical professionals "who added health information to these incidents beyond the scope of what these [individuals] had self-reported" related to their accident. The court specifically referred to information given to EMTs "coming in and assessing anything." This implicates third-party EMT's called to the scene—particularly because the Venetian never

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However, Sekera expressly represented to the district court that she would not do so. Furthermore, as to this discovery order, the Venetian did not ask the district court to order Sekera not to share the incident reports with outside individuals. Nor has it argued in this writ petition that the district court should have made such an order.

claimed below that its own employees were EMTs. The district court also noted that health insurance information should also be redacted.

The district court's order is consistent with Sekera's explanation that she is seeking only "why [the individual] fell, so that we know what the Venetian knew and when they knew it." Indeed, she specifically stated that she was not seeking any information "about mental disorders or previous medical conditions like heart conditions [or] high cholesterol." Therefore, the district court's order does not warrant the grant of the petition considering the proceedings below. As such, the district court's discovery order was not a clear abuse of discretion warranting writ relief.[8] Accordingly, we

ORDER the petition DENIED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

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

[8]Writ relief is discretionary, *see Dep't of Taxation*, 136 Nev. at 368, 466 P.3d at 1283, and we decline to address the other issues argued by the parties in this original proceeding.