

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID G. MARTINEZ; AND CHILLY
WILLY'S HANDYMAN SERVICES,
LLC,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
RONALD J. ISRAEL, DISTRICT
JUDGE,

Respondents,

and

TAYLOR MILES CAPE, AN
INDIVIDUAL,
Real Party in Interest.

No. 83911

FILED

APR 06 2022

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order adopting a discovery commissioner report and recommendation in a personal injury action. The district court's order concludes that the enactment of NRS 52.380 constitutes good cause under NRCPC 35 to allow a third-party observer at real party in interest's neuropsychological examination and to audio record the examination, and it further requires petitioners' expert to share the raw data with real party in interest's expert, who in turn may share the raw data with real party in interest's attorney.

Recently, and after the district court's decision in this matter, this court declared NRS 52.380 unconstitutional for violating separation of powers. *Lyft, Inc. v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 86, 501

P.3d 994 (2021). Accordingly, NRS 52.380 was improperly relied upon in determining that real party in interest had demonstrated good cause under NRCP 35, warranting mandamus relief. *See State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (describing when mandamus relief is appropriate). We therefore

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order granting real party in interest's request for examination protections and to reconsider that request under NRCP 35 in light of *Lyft*.¹

Silver, J.
Silver

Cadish, J.
Cadish

Pickering, J.
Pickering

cc: Hon. Ronald J. Israel, District Judge
Dennett Winspear, LLP
Keating Law Group
Greenman Goldberg Raby & Martinez
Eighth District Court Clerk

¹In light of this order, petitioners' motion and emergency motion for stay pending our consideration of this writ petition are denied as moot.