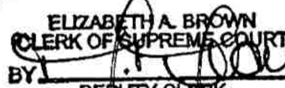
IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; MARIBEL MCADORY; JEFFREY GRANGER; AND PAMELA NORTON-LINDEMUTH,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
J.D., AN INDIVIDUAL,
Real Party in Interest.

No. 85469



FILED

AUG 18 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus challenges a district court order denying a motion to dismiss.

Real party in interest J.D. sued petitioners Clark County School District (CCSD) and three of its administrators, Maribel McAdory, Jeffrey Granger, and Pamela Norton-Lindemuth (collectively, petitioners), at William V. Wright Elementary School (Wright Elementary) on May 25, 2022. The complaint alleged that, between August and November 2016, B.D., J.D.'s minor son, was sexually assaulted by three kindergarten classmates in a bathroom at Wright Elementary. J.D., individually and on behalf of B.D., brought six tort claims against petitioners under various

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theories of negligence.[1] The complaint alleged that both J.D. and B.D. suffered damages because of petitioners' failure to prevent or adequately respond to the abuse.

On June 28, 2022, petitioners filed a motion to dismiss the complaint with respect to J.D.'s individual claims pursuant to NRCP 12(b)(5) for failure to state a claim upon which relief can be granted. Petitioners argued that the two-year statute of limitations for personal injury claims under NRS 11.190(4)(e) barred J.D. from bringing any claims on her own behalf.

In August 2022, the district court denied petitioners' motion to dismiss. The court cited to NRS 11.215(1), which eliminates any limitations period for claims for damages arising from sexual abuse that occurred when the plaintiff was under the age of 18.

Petitioners brought the instant writ petition challenging the district court's order denying dismissal in October 2022. We elect to entertain the petition because petitioners lack an adequate and speedy remedy at law. We grant the petition because the district court abused its discretion by (1) failing to make findings as to whether petitioners are "alleged perpetrator[s] . . . of the sexual abuse or exploitation of the plaintiff" pursuant to NRS 11.215(1), and (2) failing to consider NRS 11.215's legislative history in determining whether the statute encompasses claims by a victim's parent. We direct the district court to vacate its order

[1]These claims included (1) negligence against CCSD, (2) negligence against Doe Teacher, (3) negligence against McAdory, (4) negligence against Granger and Norton-Lindemuth, (5) negligent hiring, training, supervision, and retention against CCSD, and (6) negligent infliction of emotional distress (NIED) against CCSD.

denying petitioners' motion to dismiss and to make further findings consistent with this order.

The statutes of limitations under NRS 11.190(4)(e) and NRS 11.215(1)

Before addressing the merits of the instant writ petition, we take the opportunity to clarify the statutes of limitation set forth under NRS 11.190(4)(e) and NRS 11.215(1) at issue in this dispute.

NRS 11.190(4)(e) establishes a two-year limitations period for "an action to recover damages for injuries to a person . . . caused by the wrongful act or neglect of another."

NRS 11.215 eliminates the limitations period under NRS 11.190(4)(e) for sexual abuse claims involving a victim under the age of 18. The statute provides, in relevant part:

> An action to recover damages *for an injury to a person* arising from the sexual abuse or sexual exploitation of the plaintiff which occurred when the plaintiff was less than 18 years of age may be commenced *against the alleged perpetrator* or *person convicted of the sexual abuse or sexual exploitation* of the plaintiff *at any time* after the sexual abuse or sexual exploitation occurred.

NRS 11.215(1) (emphases added).

Here, the district court found that "[t]he phrase 'damages for an injury to a person' in the opening sentence of NRS 11.215 creates ambiguity as to whether the statute applies to eliminate any limitations period for an action to recover damages by the parent of a child victim of sexual abuse or sexual exploitation." Given this ambiguity as to whether J.D.'s claims were time-barred, the district court determined that dismissal under NRCP

12(b)(5) was inappropriate.[2] The district court denied petitioners' motion "without prejudice to renew as a motion for summary judgment following discovery."

Petitioners' central argument is that NRS 11.215(1) does not apply to J.D.'s claims, because the statute eliminates the limitations period only with respect to a sexual abuse victim's claims (rather than a victim's parent's claims) and only with respect to claims against an alleged perpetrator of sexual abuse. Therefore, petitioners argue that the district court should have dismissed J.D.'s claims.

We elect to entertain the instant writ petition

This court has previously explained that "[a] writ of mandamus is available [1] to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or [2] to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (footnote omitted); *see also* NRS 34.160.

"Writ relief is *not available*, however, when an adequate and speedy legal remedy exists." *Id.* (emphasis added); *see also* NRS 34.170. Consequently, this court "generally decline[s] to consider writ petitions that challenge interlocutory district court orders denying motions to dismiss" because "an appeal from the final judgment typically constitutes an adequate and speedy legal remedy." *Id.*

[2]A motion to dismiss under NRCP 12(b)(5) may be granted where it "appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (internal quotation marks omitted).

That said, if an appeal from a final judgment is *not* an adequate and speedy legal remedy, this court has "indicated that [it] will consider petitions denying motions to dismiss" under two exceptional circumstances. *Id.* at 197-98, 179 P.3d at 558-59. First, when "no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule." *Id.* Or, second, when "an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition." *Id.*

As explained below, we find that an appeal from a final judgment would not constitute an adequate and speedy legal remedy for petitioners in this dispute. We further find this petition satisfies both exceptional circumstances outlined in *International Game Technology.*

Petitioners lack an adequate and speedy legal remedy

As explained previously, the district court did not conclusively determine that NRS 11.215(1) applied to J.D.'s claims, but that, while ambiguous, NRS 11.215(1) *could* apply and permit J.D.'s claims to proceed. For this reason, the district court denied dismissal "without prejudice to renew as a motion for summary judgment following discovery."

J.D. argues that petitioners have an adequate and speedy legal remedy because there is no final judgment on J.D.'s claims, and petitioners have a right to appeal if necessary. Indeed, the district court's order appears to have allowed for the possibility that, at summary judgment or some later juncture, the court *could agree* with petitioners that NRS 11.215(1) *does not apply* and that J.D.'s claims are time-barred under NRS 11.190(4)(e).

We agree with petitioners, however, that it is neither adequate nor speedy to require litigation with respect to J.D.'s claims when these claims may not be legally viable in the first place. The district court's

prerogative was to determine whether J.D.'s claims were time-barred at the dismissal stage, rather than postponing this finding for a later juncture. *See Kellar v. Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971) ("When the defense of the statute of limitations appears from the complaint itself, a motion to dismiss is proper."). Even if petitioners prevail at the summary judgment or appeal stage, it is difficult to see how this legal remedy would be adequate and speedy, given that such a determination would likely circle back to the same application of facts and law that could have been decided on the pleadings or in the present writ.

We therefore conclude that petitioners lack an adequate and speedy legal remedy for purposes of writ relief.

Both International Game Technology *exceptions apply*

Again, this court will make an exception to entertain writ petitions denying motions to dismiss when "(1) no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule, or (2) an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition." *Int'l Game Tech.*, 124 Nev. at 197-98, 179 P.3d at 558-59.

Here, the first exception is satisfied because no factual dispute exists between the parties, and the plain language of NRS 11.190(4)(e) and NRS 11.215 would require the district court to dismiss this action if the court finds that petitioners are not "alleged perpetrator[s] or person[s] convicted of the sexual abuse or exploitation of the plaintiff" pursuant to NRS 11.215(1).

Alternatively, the second exception is satisfied because by addressing the scope of NRS 11.215(1)'s limitations waiver, as well as ambiguous terms within the statute, the instant petition presents an

important issue of law needing clarification. Moreover, judicial economy favors hearing the petition. For the same reasons that an appeal would not provide petitioners an adequate and speedy legal remedy, permitting J.D. to proceed in district court with a claim that is not legally viable would be an improper use of judicial resources.[3]

We therefore conclude that this dispute presents an exceptional circumstance under which this court may entertain a writ petition challenging denial of a motion to dismiss. Consequently, we elect to entertain the instant petition.

We grant the instant petition on its merits

As stated above, writ relief is available "to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558. This court "[has] previously equated a manifest abuse of discretion with [a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *AeroGrow Int'l, Inc. v. Eighth Judicial Dist. Court*, 137 Nev. 734, 738, 499 P.3d 1193, 1197 (2021) (second alteration in original) (internal quotation marks omitted). But when a writ petition involves an issue of statutory interpretation, this issue is reviewed de novo. *Id.* at 739, 499 P.3d at 1197-98.

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[3]J.D. argues that judicial economy does not favor entertaining the instant petition because J.D.'s claims "are entirely derivative of B.D.'s claims" and the parties will still have to litigate petitioner's negligence liability as to B.D. We disagree. While the essence of J.D.'s claims may be similar to B.D.'s, the negligence inquiries with respect to J.D. and B.D. are not identical. If J.D. were permitted to proceed on her own behalf, the district court would have to establish petitioners' negligence and resulting damages as to *both* parent *and* child, rather than child alone, which would consume additional time and resources.

Here, petitioners argue that the district court abused its discretion for two principal reasons: (1) by applying the limitation waiver set forth in NRS 11.215(1) to defendants who are not "alleged perpetrator[s] or person convicted of the sexual abuse or sexual exploitation of the plaintiff"; and (2) by not looking to the legislative history of NRS 11.215 to resolve ambiguity as to the "person" who may bring an action for injury, without limitation, arising from the sexual abuse of a minor victim. Because both of these arguments raise issues of statutory interpretation, this court will review NRS 11.215 de novo to determine whether the district court's interpretation was clearly erroneous, and thus an abuse of discretion.

As we explain below, we conclude that the district court abused its discretion by (1) failing to make findings as to whether petitioners are "alleged perpetrator[s]" pursuant to NRS 11.215(1), and (2) failing to consider NRS 11.215's legislative history in determining whether the statute encompasses claims by a victim's parent.

The district court abused its discretion by failing to make findings as to whether petitioners are "alleged perpetrator[s]" under NRS 11.215(1)

"This court interprets statutes by their plain meaning unless there is ambiguity, the plain meaning would provide an absurd result, or the plain meaning 'clearly was not intended.'" *AeroGrow*, 137 Nev. at 739, 499 P.3d at 1198 (quoting *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020)).

We agree with petitioners that NRS 11.215(1)'s language is plain, and clearly applies the limitations waiver *only* to suits "against the alleged perpetrator or person convicted of the sexual abuse or sexual exploitation of the plaintiff." We are not persuaded by J.D.'s position that

this plain meaning would produce absurd results and does not reflect the Legislature's intent. The Legislature clearly intended to prevent perpetrators of abuse from escaping liability based on the statute of limitations. We see no evidence of clear intent to extend this waiver to claims against non-perpetrator third parties. Nor has J.D. convinced us that any resulting application of the statute's plain language to the instant facts would be patently absurd. *Cf. Home Warranty Adm'r of Nev., Inc. v. State, Dep't of Bus.*, 137 Nev. 43, 47, 481 P.3d 1242, 1247 (2021) (equating an "absurd result" as one which is "so gross as to shock the general moral or common sense" (quoting *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930))).

In its order denying dismissal, the district court did not consider or address the plain language in NRS 11.215(1) which limits the limitations waiver to suits against the alleged perpetrator or person convicted of sexual abuse. Its failure to do so was a clearly erroneous interpretation of law, as the court overlooked a key provision regarding the type of claim to which NRS 11.215(1) is applicable. We therefore conclude that the district court's error constituted an abuse of discretion. We direct the district court to make further findings as to whether petitioners are "alleged perpetrator[s]" pursuant to NRS 11.215(1).[4] If petitioners are not found to be alleged perpetrators, then a plain reading of NRS 11.215(1) would mandate dismissal.

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[4]We note that none of the petitioners have been convicted of the sexual abuse or exploitation of B.D. Therefore, for practical purposes, the district court need only consider whether petitioners are a "perpetrator" pursuant to NRS 11.215(1).

The district court abused its discretion by failing to consider NRS 11.215's legislative history in determining whether the statute encompasses claims by a victim's parent

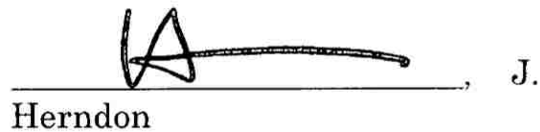
As previously discussed, the district court determined that "[t]he phrase 'damages for an injury to a person' in the opening sentence of NRS 11.215(1) creates ambiguity as to whether the statute applies to eliminate any limitations period for an action to recover damages by the parent of a child victim of sexual abuse or sexual exploitation." The district court denied petitioners' motion to dismiss because of this ambiguity.

A statute is ambiguous if it is "subject to more than one reasonable interpretation." *Savage v. Pierson*, 123 Nev. 86, 89, 157 P.3d 697, 699 (2007). If ambiguous, the plain meaning rule does not apply. *Id.* Instead, "legislative intent is the controlling factor, and reason and public policy may be considered in determining what the Legislature intended." *Id.*

We agree with the district court that the phrase "damages for an injury to a person" is ambiguous because this phrase is subject to more than one reasonable interpretation. Subsequently, however, the district court did not look to the legislative intent behind NRS 11.215(1) as required by our rules of statutory interpretation. Rather, the district court simply concluded that that the statute was ambiguous without further analysis and implied that it would revisit the issue at a later juncture following discovery. The district court did so despite the parties each presenting their respective legislative histories of NRS 11.215 prior to the court's ruling on petitioners' motion to dismiss. Accordingly, we conclude that the district court's failure to consider the legislative intent behind NRS 11.215(1), despite finding the statute ambiguous, was a manifest abuse of discretion because this was a clearly erroneous application of law.

Consistent with the foregoing, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its August 16, 2022, order denying petitioners' motion to dismiss and to make findings as to (1) whether petitioners are "alleged perpetrator[s]" pursuant to NRS 11.215(1), such that dismissal is not otherwise plainly warranted; and, if necessary (2) whether the legislative history, reason, and public policy behind NRS 11.215(1) indicates an intent for the statute to encompass claims by a victim's parent.


_______________, J.
Herndon

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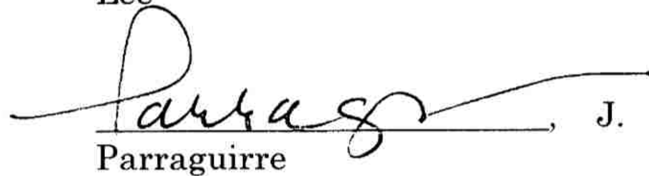
_______________, J.
Parraguirre

cc: Hon. Jerry A. Wiese, Chief Judge
Hon. Mark R. Denton, District Judge
Olson, Cannon, Gormley, & Stoberski
Christian Morris Trial Attorneys
Eighth District Court Clerk