IN THE SUPREME COURT OF THE STATE OF NEVADA

DEBBRAH YOCOM; HOWARD STARK, d/b/a SIN CITY PASSENGER BUSES,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JOANNA KISHNER, DISTRICT JUDGE,
Respondents,
and
ETHAN FERREE,
Real Party in Interest.

No. 86378

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges district court orders granting Real Party in Interest's pretrial motions in limine.[1]

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. *See* NRS 34.160; *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Writ relief "is proper only when there is no

[1]Petitioners alternatively seek a writ of prohibition but do not cogently argue that the district court acted without or in excess of its jurisdiction. Therefore, a writ of prohibition is not appropriate. *See* NRS 34.320; *Goicoechea v. Fourth Jud. Dist. Ct.*, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980) (holding that a writ of prohibition "will not issue if the court sought to be restrained had jurisdiction to hear and determine the matter under consideration").

plain, speedy, and adequate remedy at law." *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Whether a petition for extraordinary writ relief will be entertained rests within this court's sound discretion. *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 475, 168 P.3d 731, 737 (2007). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *Pan.*, 120 Nev. at 228, 88 P.3d at 844.

This court typically declines to consider writ petitions challenging interlocutory district court orders because an appeal is usually an adequate remedy. *Helfstein v. Eighth Jud. Dist. Ct.*, 131 Nev. 909, 912, 362 P.3d 91, 94 (2015). We will consider writs under narrow circumstances: when the issue presents circumstances of "urgency or strong necessity," *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008); when a writ petition presents an opportunity to clarify an important area of law and serves judicial economy, *Helfstein,* 131 Nev. at 912-13, 362 P3d at 94; or when a writ petition presents a matter of first impression and considerations of judicial economy support its review. *Humbolt Gen. Hosp. v. Sixth Jud. Dist. Ct*, 132 Nev. 544, 547, 376 P.3d 167, 170 (2016).[2]

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[2]Our dissenting colleague references *Williams v. Eighth Jud. Dist. Ct.*, 127 Nev. 518, 524, 262 P.3d 360, 364 (2011) for the proposition that writ relief may be appropriate to challenge a trial court's admission or exclusion of evidence even when an appeal is available. However, *Williams*, in line with our discussion herein, further explained that, "we may consider writ petitions challenging the admission or exclusion of evidence when 'an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction,'" *Sonia F. v. Dist. Ct.*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009) (quoting *Mineral County*, 117 Nev. at 243, 20 P.3d at 805, or when the issue is "one of first impression and of fundamental public importance," *County of Clark v. Upchurch*, 114 Nev. 749, 753, 961 P.2d 754, 757 (1998). *Williams*, 1127 Nev. at 525, 262 P.3d at 365.

Here, none of these narrow exceptions apply. Whether correct or incorrect, the rulings challenged here are evidentiary rulings based on the facts of the particular case. The writ petition neither presents an opportunity to clarify an important area of law, nor presents a matter of first impression. And certainly, given the more than two years that lapsed between the order and the petition, the matter is not one of urgency. Judicial economy is not generally promoted by deciding cases piecemeal by avoiding the final judgment rule. *Archon Corp. v. Eighth Jud. Dist. Court*,133 Nev. 816, 825, 407 P.3d 702, 710 (2017) citing *Veazey v. City of Durham*, 231 N.C. 357, 363, 57 S.E.2d 377, 382 (1950) ("There is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders.") While Yocom argues that the challenged orders present a "seismic change" in failure-to-yield cases that could "infect a multitude of cases on the state district courts' dockets," she fails to identify any other such cases. Yocum has not demonstrated writ relief is appropriate.

Based on our review of the petition, we conclude that the petitioners have failed to meet their burden of demonstrating that extraordinary writ relief is warranted. *See id.* Accordingly, we

ORDER the petition DENIED.

_____, J.
Herndon

_____, J.
Bell

LEE, J., dissenting:

Because the district court's decision to exclude certain evidence is a manifest abuse of discretion, tantamount to depriving the defendant of an affirmative defense, I would entertain the writ. It is well established that the power to issue writs of mandamus is part of this court's original jurisdiction, Nev. Const. art. 6, § 4, and that the exercise of that power is purely within the court's discretion. *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). While "this court does not typically employ" this power "where ordinary means, already afforded by law, permit the correction of alleged errors[,]" *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 681, 476 P.3d 1194, 1197 (2020), writ relief may be granted when a lower court commits a clear and indisputable legal error or a manifest abuse of discretion. *Williams v. Eight Jud. Dist. Ct.*, 127 Nev. 518, 524, 262 P.3d 360, 364 (2011) (explaining that writ relief may be appropriate to challenge a court's admission or exclusion of evidence even when an appeal is available). In my view, mandamus relief is warranted in this instance. While an appeal after trial may provide Yocom with an appellate remedy after trial, I find that remedy to be inadequate where critical evidence is being inexplicably barred without adequate legal justification.

Here, it is alleged that Ferree, a motorcyclist, was traveling at a speed of 60 MPH (twice the legal speed limit) southbound on Las Vegas Boulevard when he collided with a left-turning passenger bus driven by Yocom. Having sustained injuries, Ferree filed suit against Yocom alleging that Yocom negligently made a left-hand turn into his path when he had the right of way. Yocom asserted a comparative fault defense and argued that Feree's excessive speed was a proximate cause of his injuries. Yocom sought to introduce expert witness testimony suggesting that if Ferree had

been travelling within the speed limit, Yocom would have safely cleared the intersection. Yocom further sought to introduce lay witness testimony from two individuals. The first was an eyewitness who saw Ferree run the red light. The second did not personally witness any part of the accident.

Ferree filed motions in limine requesting the court exclude any mention of Ferree's speed, including the aforementioned expert and lay witness testimonies. After a hearing, the district court granted Ferree's motions in limine. In its order in limine excluding any mention of Ferree's speed, the district court, with thin and erroneous analysis, concluded that Ferree's speeding "was not a proximate cause of the subject collision." In a separate order regarding the lay witnesses, the district court excluded the eyewitness testimony because running the red light "could be viewed as inadmissible evidence of a prior bad act" and excluded the second lay witness's testimony because it was based on hearsay.

The district court committed a manifest abuse of discretion when it excluded any mention of Ferree's speed. Whether a plaintiff's negligence was a factual or proximate cause is an issue of fact that should be decided by the finder of fact. *Nehls v. Leonard*, 97 Nev. 325, 328, 630 P.2d 258, 260 (1981) ("In Nevada, issues of negligence and proximate cause are considered issues of fact and not of law, and thus they are for the jury to resolve."). By excluding evidence of Ferree's excessive speed, the district court not only decided a question of fact, an error in itself, but also erred by de facto dismissing Yocom's comparative fault defense. *Barreth v. Reno Bus Lines, Inc.*, 77 Nev. 196, 198, 360 P.2d 1037, 1038 (1961) ("[I]t was within the province of the jury, in reaching its verdict, to consider . . . any negligence on the part of respondents as alleged in appellants' complaint, as well as any negligence on the part of appellants as alleged in respondents'

answer as an affirmative defense[.]"); *see generally LVMPD v. Yeghiazarian*, 129 Nev. 760, 766, 312 P.3d 503, 507 (2013) ("Certainly, if Raymond was intoxicated at the time of the accident, that information would have been relevant."). Thus, Ferree's excessive speed should not be kept from the jury.

The district court also committed a manifest abuse of discretion when it excluded eyewitness testimony that Ferree ran a red light before colliding with the left-turning passenger bus that, allegedly, should have yielded the right of way. In granting Ferree's motion in limine, the district court concluded that it was necessary to exclude the testimony because running a red light is another act pursuant to NRS 48.045 and is therefore inadmissible. NRS 48.045(2) reads, "[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith." Ferree running a red light is not character evidence, it is evidence that he was arguably comparatively negligent. *Cf. LVMPD*, 129 Nev. at 763-67, 312 P.3d at 506-08; *Wilkes v. Anderson*, 100 Nev. 433, 434–35, 683 P.2d 35, 35-6 (1984) (indicating that a jury may consider a plaintiff's choice to illegally jaywalk across a major thoroughfare). Thus, testimony that Ferree ran the red light should not have been excluded.

Unlike the exclusion of Ferree's speed and the eyewitness testimony, the district court's exclusion of the second witness's testimony was appropriate. Absent a recognized exception, hearsay is never admissible. NRS 51.065. Accordingly, the hearsay testimony was properly excluded.

Given the district court's clearly erroneous application of the law, I would grant the instant petition and affirm in part and vacate in part the district court's orders in limine. I would affirm the exclusion of the

hearsay testimony but would vacate the remainder of the orders. As this court elects not to exercise its discretion to address the district court's clear error, likely resulting in an unnecessary waste of judicial resources and unnecessary costs incurred by the parties, I cannot join the majority. For these reasons, I respectfully dissent.

_____, J.
Lee

cc: Hon. Joanna Kishner, District Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Plante Lebovic/Las Vegas
Schuetze, McGaha, Turner & Ferris PLLC
Eglet Adams
Eighth District Court Clerk