

IN THE SUPREME COURT OF THE STATE OF NEVADA

GO WIRELESS, INC.; AND GO
WIRELESS HOLDINGS,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
TIMOTHY C. WILLIAMS, DISTRICT
JUDGE,

Respondents,

and

ALLAN HERDEMIAN; ERIC
BARNHART; APRIL DAY; AMY
DAMSCHEN; GAGE DAVELAAR; and
ELI ANDREWS,

Real Parties in Interest.

GO WIRELESS, INC., A NEVADA
CORPORATION; AND GO WIRELESS
HOLDINGS, INC., A NEVADA
CORPORATION,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; THE HONORABLE TIMOTHY
C. WILLIAMS, DISTRICT JUDGE; AND
EIGHTH JUDICIAL DISTRICT COURT,
CHIEF JUDGE,

Respondents,

ALLAN HERDEMIAN; ERIC
BARNHART; APRIL DAY; AMY
DAMSCHEN; GAGE DAVELAAR; AND
ELI ANDREWS,

Real Parties in Interest.

No. 86328

FILED
SEP 06 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 86808

ORDER DENYING PETITIONS

These are consolidated original petitions for writs of mandamus or, alternatively, prohibition challenging district court orders (1) expanding the class certified under NRCP 23, and (2) bifurcating trials for the original and expanded subclasses.

Petitioners Go Wireless, Inc., and HUKL Investments, Inc. f/k/a Go Wireless Holdings, Inc. (collectively, GWI), seek writs of mandamus or, alternatively prohibition directing the district court to vacate the challenged orders. A writ of mandamus may “compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or . . . control an arbitrary or capricious exercise of discretion.” *Int’l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (footnote omitted); NRS 34.160. A writ of prohibition may issue to curb a district court’s extrajurisdictional acts.¹ *Cote H. v. Eighth Jud. Dist. Ct.*, 124 Nev. 36, 39, 174 P.3d 906, 907-08 (2008). The decision to entertain a petition for extraordinary writ relief rests within our broad discretion. *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 475, 168 P.3d 731, 737 (2007).

We decline to entertain the merits of the first-filed writ petition, Docket No. 86328, because GWI has not met the prerequisites for traditional mandamus to issue. It bears “the burden of showing that this court’s extraordinary intervention is warranted.” *Nev. State Bd. of*

¹GWI does not argue that the district court took any action in excess of its jurisdiction in either of its petitions. As GWI has failed to cogently support its position, we decline to consider whether a writ of prohibition would be an appropriate remedy. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

Architecture, Interior Design & Res. Design v. Eighth Jud. Dist. Ct., 135 Nev. 375, 377, 449 P.3d 1262, 1264 (2019). GWI must show “a legal right to have the act done which is sought by the writ [and] it must appear that the act which is to be enforced by the mandate is that which it is the plain legal duty of the respondent to perform[.]” *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680, 476 P.3d 1194, 1196 (2020) (quoting Thomas Carl Spelling, *A Treatise on Injunctions and Other Extraordinary Remedies* 1173 (2d ed. 1901)). In considering whether to issue a writ of mandamus, we apply a manifest abuse of discretion standard. *Stephens Media v. Eighth Jud. Dist. Ct.*, 125 Nev. 849, 860, 221 P.3d 1240, 1248 (2009).

GWI cannot demonstrate that the district court either manifestly abused its discretion or committed clear legal error. The district court evaluated NRCP 23 in its order expanding the class. It found that the commission calculations relevant to the alleged damages suffered by the expanded class overlapped with the original class. It also cited a bevy of cases for the proposition that common issues regarding damages may predominate even when the party opposing certification can present evidence of individual variations among the class members. Therefore, the district court adequately analyzed the class expansion under the applicable legal standards.

GWI’s reliance on *Meyer v. Eighth Judicial District Court*, 110 Nev. 1357, 885 P.2d 622 (1994), is misplaced. In *Meyer* we held the district court abused its discretion in finding a lack of common questions of law or fact where all of the proposed class members had been impacted by the same alleged unlawful corporate policy. *Id.* at 1365, 885 P.2d at 627. There is no similar abuse of discretion apparent in the record here. Because GWI has

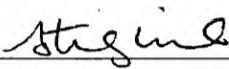
not met its burden to warrant the issuance of traditional mandamus, we deny the first-filed petition.

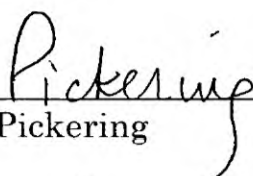
We also deny the second-filed writ petition, Docket No. 86808, because GWI has failed to demonstrate that the district court manifestly abused its discretion in bifurcating the trials for the two subclasses. *See Borger v. Eighth Jud. Dist. Ct.*, 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004) (recognizing “the inherent power of the judiciary to economically and fairly manage litigation”). As GWI conceded at oral argument before this court, the district court correctly found dissimilarities between the commission calculations for each subclass. Both NRCP 23(e)(1)(E) and NRCP 42(b) vest power with the district court in determining how to best manage trials for separate subclasses. These rules leave procedural decisions to the sound discretion of the trial court. And GWI does not provide any basis for us to disturb the district court’s exercise of its discretion.

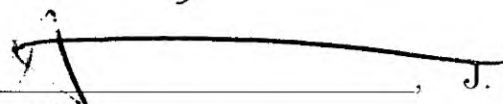
GWI argues that the district court’s rulings between class expansion and trial bifurcation constitute inconsistency. We disagree. The district court’s rulings are congruent because GWI’s first-filed petition concerns the substance of the class expansion while GWI’s second-filed petition concerns the procedural mechanisms to handle trial for the expanded class. As the district court analyzed, individual variations in commission calculation might not suffice to defeat the legal requirement of predominance but may provide a basis justifying separate trials. Additionally, we find GWI’s argument that the district court failed to make certain factual findings unavailing, as GWI did not request such findings before the district court. Having concluded that our extraordinary intervention is not warranted, we

ORDER the petitions DENIED.

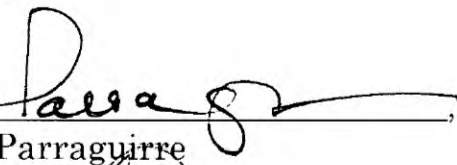

_____, C.J.
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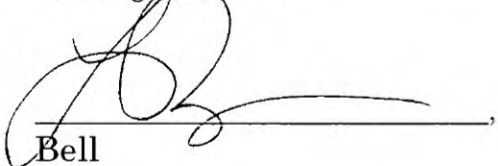

_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre


_____, J.
Bell

cc: Hon. Timothy C. Williams, District Judge
Stephen E. Haberfeld, Settlement Judge
Fisher & Phillips LLP
Bailey Kennedy
Fernald Law Group LLP
Kabateck Brown Kellner, LLP
Kemp Jones, LLP

Macias Counsel, Inc.
Eighth District Court Clerk