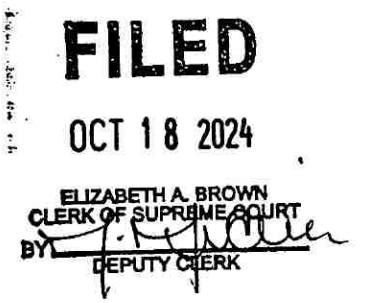
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

7-ELEVEN, INC.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE TARA D. CLARK NEWBERRY,
Respondents,
and
KALLUM SMITH; AS DIVERSIFIED, INC.; KS SINGH, INC.; MARIANO TEJEDA-ZUNIGA; RICHARD BEASLEY; AND J.S. DEO, INC.,
Real Parties in Interest.[1]

No. 88299-COA



ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order granting a motion to intervene and unseal the record in a tort action against 7-Eleven and its franchisees.[2]

[1]Although Kallum Smith; AS Diversified, Inc.; KS Singh, Inc.; Mariano Tejeda-Zuniga; and J.S. Deo, Inc., are named as real parties in interest, only Smith participated in the proceedings directly giving rise to this writ petition, albeit in a de minimis manner, and although this court gave these parties an opportunity to file an answer to the petition, they have not done so.

[2]7-Eleven seeks either a writ of mandamus or a writ of prohibition. Because we conclude that a writ of mandamus is the appropriate remedy, we do not address prohibition relief further.

24-39358

In February 2020, real party interest Richard Beasley was hit on the head with a baseball bat by a 7-Eleven store clerk who believed Beasley was stealing a beer.[3] The impact to Beasley's skull required him to undergo emergency brain surgery. Beasley subsequently sued petitioner 7-Eleven for his injuries. In connection with that litigation, Beasley moved to intervene and unseal the record in a separate case, the case before us, which included 7-Eleven as a defendant and was factually similar to his case against 7-Eleven.[4]

A judgment of dismissal was entered in the case before us after a settlement was reached in August 2017. Before the case was dismissed, the district court granted one defendant's motion to seal the record, which 7-Eleven joined, finding that there was good cause to seal the record under Rule 3 of the Nevada Rules Governing the Sealing and Redacting of Records (SRCR).[5] The court sealed 168 of the 332 documents in the record pursuant to SRCR 3(4)(b), (e), (f), (g), and (h), determining that privacy interests outweighed any public interest in access to the record. More than five years later, Beasley moved to intervene and unseal the record because he believed

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[3]We do not recount the facts except as necessary to our disposition.

[4]Beasley also sought to modify an NRCP 26(c) protective order entered during discovery to gain access to unfiled discovery materials, but the district court denied that request, and Beasley did not file a cross-petition to challenge that decision. *Cf. Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) (concluding, in the context of an appeal, that a party "who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal"). The motion to modify the protective order therefore is not further addressed in this order.

[5]Although the district court applied SRCR 3(4), which sets forth the process for sealing records, its order to seal mistakenly cited SRCR 4, which governs the unsealing of records.

access to the sealed record would help avoid duplicative discovery in his own case. 7-Eleven opposed the motion, and a hearing on the merits was held in January 2024.

At the hearing, 7-Eleven argued that it was inappropriate to unseal the record because SRCR 4(4) did not allow a record to be unsealed more than five years after entry of final judgment. Beasley argued that the time bar did not apply because the sealing order did not meet the requirements to seal under SRCR 3(4), so the order was void. The district court agreed with Beasley. It held there were not adequate written findings to support the sealing of the specific documents and that the court had relied solely on the agreement to seal the record as a part of settlement between the original parties to the case. The court determined the sealing order was void and granted Beasley's motion in part to unseal the record. The court's order to unseal the record required the record to be unsealed and released for review to a special master, who had been appointed in Beasley's action against 7-Eleven, to resolve any remaining confidentiality issues. Subsequently, 7-Eleven filed the instant writ petition challenging the district court's order granting Beasley's motion to intervene and unseal the record arguing the same points raised in the district court.

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This extraordinary relief may be available if the petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Whether a petition for a writ of mandamus will be considered is within the appellate court's

sole discretion. *Smith*, 107 Nev. at 677, 818 P.2d at 851. In the discovery context, Nevada appellate courts have entertained writ petitions involving the disclosure of privileged information as there would be no adequate remedy at law that could restore the confidentiality of such information once it is disclosed. *See Valley Health, LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. 167, 171-72, 252 P.3d 676, 678-79 (2011) (entertaining a petition for a writ of mandamus that challenged a discovery order compelling the disclosure of purportedly privileged information); *see Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct.*, 136 Nev. 221, 222-23, 467 P.3d 1, 3-4 (Ct. App. 2020) (entertaining a petition for a writ of mandamus that challenged a district court's order requiring production of unredacted prior incident reports in discovery).

Here, the challenged order is not appealable, *see In re Binh Chung*, No. 68654, 2015 WL 6830647 at *1 (Nev. Nov. 5, 2015) (Order Dismissing Appeal) (concluding that a post-judgment order granting a motion to intervene and to unseal records was not appealable), and 7-Eleven has no available remedy to protect the asserted confidentiality of its documents should they be disclosed, *see Valley Health*, 127 Nev. at 171-72, 252 P.3d at 678-79. Moreover, consideration of 7-Eleven's writ petition is necessary to promote the interests of justice and control a manifest abuse of discretion. *See State v. Eighth Jud. Dist. Ct.*, 127 Nev. 927, 931-32, 267 P.3d 777, 779-80 (2011) ("A manifest abuse of discretion is [a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule."). We therefore elect to entertain this writ petition. *See Smith*, 107 Nev. at 677, 818 P.2d at 851.

In its petition, 7-Eleven argues that the record was properly sealed, and SRCR 4(4) bars Beasley from unsealing the record because it

has been more than five years since the record was sealed. Beasley responds that the five-year limitation should not apply because the order to seal did not follow the requirements of SRCR 3(4) and thus was void ab initio.

The Nevada Rules Governing the Sealing and Redacting of Records detail the proper procedures for unsealing and sealing a case. SRCR 4(2) and 4(4) are two such rules. SRCR 4(2) provides that "[a] sealed court record in a case should be unsealed only upon stipulation of all the parties, upon the court's own motion, or upon a motion filed by a named party or another person." SRCR 4(4) gives the condition that, "[n]o motion may be made under this rule more than 5 years after a final judgment has been entered in an action, or if an appeal from a final judgment is taken, after issuance of the remittitur whichever is later."

Statutory interpretation is a question of law that courts review de novo, even in the context of a writ petition. *Wheble v. Eighth Jud. Dist. Ct.*, 128 Nev. 119, 122, 272 P.3d 134, 136 (2012) (citing *Int'l Game Tech.*, 124 Nev. at 198, 179 P.3d at 559). The rules of statutory interpretation not only apply to Nevada statutes, but also to the Nevada Supreme Court Rules, which include the SRCR. *Reggio v. Eighth Jud. Dist. Ct.*, 139 Nev., Adv. Op. 4, 525 P.3d 350, 353 (2023). First, courts determine the plain meaning of the rule. *Wheble*, 128 Nev. at 122, 272 P.3d at 136. If the rule is clear on its face, courts will not look beyond the rule's plain language. *See Beazer Homes Nev., Inc. v. Eighth Jud. Dist. Ct.*, 120 Nev. 575, 579-80, 97 P.3d 1132, 1135 (2004); *Reggio*,139 Nev., Adv. Op. 4, 525 P.3d at 353.

In this case, the district court erred in ordering the record unsealed as Beasley filed his motion to intervene and unseal the record more than five years after the record was sealed and judgment entered.

With the court entering final judgment on August 4, 2017, and Beasley moving to unseal the record on December 13, 2023, more than six years had passed—preventing the record from being unsealed under SRCR 4(4). Nothing in the SRCR suggests that the five-year time bar is discretionary or has any exceptions. Nor are we persuaded by Beasley's argument that the sealing order was void ab initio. *See Dekker/Perich/Sabatini Ltd. v. Eighth Jud. Dist. Ct.*, 137 Nev. 525, 530, 495 P.3d 519, 524 (2021) ("An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could 'not lawfully adopt.'").[6] Because the district court had jurisdiction to seal the record and provided specified reasons for sealing the documents at issue, we reject Beasley's argument that the sealing order should be rendered void. Thus, because Beasley

[6]Additionally, although Beasley also suggests that the district court could unseal the records if the sealing order was merely voidable, his argument fails for two reasons. First, none of the sources cited by Beasley directly support the proposition that a procedural deadline may be avoided if an order is merely voidable. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38 130 P.3d 1280, 1288 n.38 (2006) (explaining that Nevada's appellate courts need not consider issues unsupported by citation to relevant legal authority). Second, the argument that the sealing order was merely voidable rather than void was not raised below. *See Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 822, 407 P.3d 702, 708 (2017) ("[I]n the context of extraordinary writ relief, consideration of legal arguments not properly presented to and resolved by the district court will almost never be appropriate.").

moved to unseal after the deadline expired, the district court should have denied his motion.[7] Accordingly, 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 order granting Beasley's motion to intervene and unseal the record.[8]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

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[7]Nothing in this order should be construed to relieve 7-Eleven of its discovery obligations in Beasley's direct action against 7-Eleven. While the parties agreed to keep the information in the sealed documents confidential in this case, courts generally do not permit parties to invoke confidentiality agreements to withhold evidence in other cases. *See Wild Game NG, LLC v. IGT*, No. 63249, 2015 WL 7575352, at *3 (Nev. Nov. 24, 2015) (Order of Affirmance) (stating the same). The special master appointed in Beasley's direct action can continue to review requested documents to determine whether any given document must be redacted or remain confidential before production.

[8]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not need to be reached given the disposition of this writ petition.

cc: Hon. Tara D. Clark Newberry, District Judge
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