IN THE SUPREME COURT OF THE STATE OF NEVADA

ORBITZ WORLDWIDE, LLC; ORBITZ LLC; ORBITZ INC.; TRAVELSCAPE LLC; TRAVELOCITY INC.; CHEAP TICKETS INC.; EXPEDIA INC.; EXPEDIA GLOBAL LLC; HOTELS.COM LP; HOTWIRE INC.; BOOKING HOLDINGS INC.; PRICELINE.COM LLC; TRAVEL WEB LLC; TRAVELNOW.COM INC.; AGODA INTERNATIONAL USA LLC; HOTEL TONIGHT INC.; AND HOTEL TONIGHT LLC,
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
THE STATE OF NEVADA; MARK FIERRO; AND SIG ROGICH,
Real Parties in Interest.

No. 88796

FILED

APR 01 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

*ORDER DENYING PETITION*

This petition for a writ of mandamus or prohibition challenges a district court order denying petitioners' motion to dismiss the action based on issue preclusion. Petitioners are various online travel companies that contract with hotels to purchase rooms at a discounted rate and then sell the rooms to the public at higher rates plus certain taxes and fees. The taxes that petitioners charge consumers are calculated on the higher, retail price of the hotel room. Hotels then invoice petitioners for the rooms at the

contracted, discounted rate and the occupancy tax rate calculated on that discounted price. Real parties in interest Mark Fierro and Sig Rogich (collectively, relators) are private citizens who filed a qui tam suit against petitioners under the Nevada False Claims Act on behalf of the State of Nevada. Relators allege that petitioners avoided paying transient-lodging taxes on hotel transactions facilitated by petitioners because they only remitted the portion of the tax charged and collected on the discounted rate, while pocketing the remaining tax collected on the marked-up rate.

While the present case was pending in the district court, Clark County filed an action against petitioners, alleging that petitioners avoided their transient-lodging tax obligations in Clark County and seeking recovery of amounts allegedly owed to Clark County under Nevada law and Clark County ordinances. Following the commencement of the Clark County action, petitioners moved for summary judgment in the instant qui tam action on the basis that NRS 357.080(3)(b) required dismissal because Clark County's lawsuit involved the same allegations or transactions as the instant action and was a case "to which the State or political subdivision is already a party." NRS 357.080(3)(b). The district court denied summary judgment, and petitioners sought writ relief with this court. We held that, even assuming the two lawsuits involved the same allegations or transactions, the suits were brought on behalf of two separate governmental entities and thus NRS 357.080(3)(b) did not bar the qui tam suit. *Orbitz Worldwide, LLC v. Eighth Jud. Dist. Ct.*, 139 Nev., Adv. Op. 40, 535 P.3d 1173, 1182 (2023).

The Clark County action, which was removed to federal court, was subsequently resolved by a grant of summary judgment in favor of petitioners. The federal district court determined that petitioners are not

"persons in the business of providing lodging" as required by NRS Chapter 244 and are therefore not obligated to pay the lodging tax. *See Clark County v. Orbitz Worldwide, LLC*, No. 2:21-CV-1328 JCM (VCF), 2023 WL 2744492, at *3 (D. Nev. Mar. 31, 2023).

Following the decision from the federal court, petitioners moved to dismiss the instant qui tam action on issue-preclusion grounds. The district court denied the motion to dismiss, finding that the State and Clark County are not in privity and thus issue preclusion does not apply. In making this determination, the district court relied on our holding in *Orbitz*, 139 Nev., Adv. Op. 40, 535 P.3d at 1183, in which we found that the "relators' action is brought on behalf of the State and not on behalf of any political subdivisions, while Clark County's action is on behalf of itself and the State is not a party thereto." The district court determined from this language that relators are not in privity with Clark County. Petitioners now seek a writ of mandamus or prohibition directing the district court to dismiss relators' complaint based on the principle of issue preclusion.

*We elect to entertain the writ petition*

This court has discretion to consider a petition for a writ of mandamus.[1] *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Writ relief is an extraordinary remedy available only in extraordinary circumstances. *Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 819, 407 P.3d 702, 706 (2017). It is not a substitute for an appeal but rather is appropriate only when there is no "plain, speedy and adequate

[1]Petitioners alternatively seek a writ of prohibition, but prohibition relief is not appropriate here as the district court had jurisdiction to hear and determine the motion to dismiss. *See Orbitz*, 139 Nev., Adv. Op. 40, 535 P.3d at 1177 n.4.

remedy in the ordinary course of law." *Id.* (internal quotation marks omitted). A traditional writ of mandamus may issue "to compel an act that the law requires or to correct a lower court's clear and indisputable legal error." *R.J. Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 138 Nev. 585, 588, 514 P.3d 425, 428 (2022) (internal quotation marks omitted); NRS 34.160.

Issue preclusion bars relitigation of a specific issue that was previously decided. *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 714 (2008). The district court's order rejecting the applicability of issue preclusion may ultimately be challenged on appeal from a final judgment, which generally precludes writ relief. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224-25, 88 P.3d 840, 841 (2004). An appeal from a final judgment, however, may not be a plain, speedy, and adequate remedy if a defendant is subjected to duplicative litigation of an issue previously decided. Similar to concepts such as qualified immunity, resolving the matter of issue preclusion avoids duplicative litigation, and the benefit of avoiding litigation "is effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). We therefore elect to entertain the petition for a writ of mandamus.

*We deny the petition on its merits*

This court reviews a district court's conclusions of law, including whether issue preclusion applies, de novo. *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). For issue preclusion to apply, certain factors must be met, including that "the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation." *Five Star Cap. Corp.*, 124 Nev. at 1055, 194 P.3d at 713 (internal quotation marks omitted); *see also Alcantara*, 130 Nev. at 260, 321 P.3d at 917 ("Issue preclusion can only

be used against a party whose due process rights have been met by virtue of that party having been a party or in privity with a party in the prior litigation." (internal quotation marks omitted)). In *Alcantara*, this court adopted the Restatement (Second) of Judgments section 41, which provides that

> (1) A person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though he were a party. A person is represented by a party who is:
>
> (a) The trustee of an estate or interest of which the person is a beneficiary; or
>
> (b) Invested by the person with authority to represent him in an action; or
>
> (c) The executor, administrator, guardian, conservator, or similar fiduciary manager of an interest of which the person is a beneficiary; or
>
> (d) An official or agency invested by law with authority to represent the person's interests; or
>
> (e) The representative of a class of persons similarly situated, designated as such with the approval of the court, of which the person is a member.
>
> (2) A person represented by a party to an action is bound by the judgment even though the person himself does not have notice of the action, is not served with process, or is not subject to service of process.

*Alcantara*, 130 Nev. at 260-61, 321 P.3d at 917. However, this list is not exhaustive, and privity may be found in other situations "in which the relationship between the parties is sufficiently close to supply preclusion." *Mendenhall v. Tassinari*, 133 Nev. 614, 618, 403 P.3d 364, 369 (2017) (internal quotation marks omitted). Because privity "is not susceptible to a clear definition," determining whether privity exists "for preclusion

purposes requires a close examination of the facts and circumstances of each case." *Id.* at 618-19, 403 P.3d at 369.

In concluding there was no privity between Clark County and the State, the district court relied on our previous decision in this case holding that this qui tam action involves a governmental entity distinct from that in the Clark County action. *Orbitz*, 139 Nev., Adv. Op. 40, 535 P.3d at 1182. Specifically, we concluded that "relators' action is brought on behalf of the State and not on behalf of any political subdivisions, while Clark County's action is on behalf of itself and the State is not a party thereto." *Id.* at 1183. However, our previous decision did not concern whether the State and Clark County were in privity for the purpose of issue preclusion but rather whether they were the same party within the meaning of NRS 357.080(3)(b).

Other courts have "generally found that no privity exists . . . between state and local governments." 46 Am. Jur. 2d, *Judgments* § 603 (2025 update). And "[a] state is not bound by a judgment to which a subordinate political subdivision was a party in the absence of a showing that such political body had an interest in the litigation as a trustee for the state." 50 C.J.S. *Judgments* § 1123 (2024 update). Petitioners argue, however, that privity exists because Clark County and the State have the same interests as they are represented by the same law firm, and because Clark County is an agent or a trustee for the State. We disagree.

*Clark County is not a trustee for the State under NRS 244.3354*

In contending that Clark County acted as a trustee of the State, petitioners rely on *Golconda Fire Protection District v. County of Humboldt*, 112 Nev. 770, 918 P.2d 710 (1996). In *Golconda*, we determined that a constructive trust was created by a statute requiring a county to collect taxes on behalf of a fire district and serve as a custodian of those revenues.

*Golconda*, 112 Nev. at 774, 918 P.2d at 712. By directing how the taxes are collected and how the treasury of the county must maintain the funds, the statute created a trustee relationship between the county and the fire district. *Id.*; *see also* NRS 474.200(3) ("When the tax is collected, it must be placed in the treasury of the county in which the greater portion of the county fire protection district is located, to the credit of the district.").

Notably, the statutory scheme underlying the present action differs from the statute at issue in *Golconda* in that it does not instruct the county to hold and maintain accounts on behalf of the State for the tax collected. Rather, NRS 244.3354 simply directs the percentage of the lodging taxes that will be retained by the county and the percentage that will be apportioned to the State. Unlike the statute in *Golconda*, NRS 244.3354 does not establish a trustee relationship in which the county must hold the collected taxes on behalf of the State. Accordingly, we find that Clark County is not a trustee for the State under NRS 244.3354.

*Clark County is not an agent of the State under NRS 244.3354(1)(b)*

Petitioners further argue that Clark County had the actual authority to impose, collect, and remit the lodging taxes as an agent of the State and that this agency relationship precludes a subsequent action brought by the State. NRS 244.3354(1)(b) and NRS 364.127 authorize the county to collect taxes on behalf of the State and dictate which percentage of taxes collected must be shared and how.[2] The administrative act of

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[2]*See* NRS 244.3354(1)(a) ("Three-eighths of the first 1 percent of the proceeds must be paid to the Department of Taxation for deposit with the State Treasurer for credit to the Fund for the Promotion of Tourism."); *see also* NRS 364.127(1)(a) (requiring "[t]he payment of the proceeds of the tax which are required to be distributed pursuant to paragraph (a) of subsection 1 of NRS 244.3354 or paragraph (a) of subsection 2 of NRS 244.3354 to the

collecting and distributing a statutorily determined amount of taxes is insufficient to establish an agency relationship. *See Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 377, 328 P.3d 1152, 1158 (2014) ("[A]n agency relationship is formed when one person has the right to control the performance of another."); *see also* Restatement (Second) of Agency § 14 (Am. Law Inst. 1958). Accordingly, we find that NRS 244.3354 does not create an agency relationship between Clark County and the State of Nevada.

*Representation by the same law firm is insufficient to establish privity*

Petitioners contend that the State was adequately represented in the Clark County lawsuit because the same law firm that represented Clark County represents relators in this action. This court has previously held that "representation by the same attorney . . . [is] insufficient to establish adequate representation" for purposes of determining whether an issue is precluded. *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 487, 215 P.3d 709, 721-22 (2009), *holding modified by Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. 15, 293 P.3d 869 (2013). Accordingly, the simple fact that relators and Clark County are both represented by the same law firm is insufficient to establish privity.

Given the facts and circumstances of the present case and the statutory scheme of NRS 244.3354, we conclude that Clark County and the State of Nevada are not in privity for the purposes of issue preclusion. *Mendenhall*, 133 Nev. at 619, 403 P.3d at 369 (privity does not lend itself to a clear definition and each case requires a detailed examination of the facts and circumstances). Because there is no privity between Clark County and

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Department of Taxation on or before the last day of the month immediately following the month for which the tax is collected").

the State, issue preclusion does not apply. Accordingly, petitioners have not demonstrated that writ relief is warranted in this matter, and we

ORDER the petition DENIED.

Pickering, J.
Pickering

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Mark R. Denton, District Judge
Bradley Arant Boult Cummings, LLP/Birmingham
Morgan, Lewis & Bockius LLP/Wash DC
Greenberg Traurig, LLP/Las Vegas
Pisanelli Bice, PLLC
Attorney General/Carson City
Attorney General/Las Vegas
Clark Hill PLLC
Eighth District Court Clerk