IN THE SUPREME COURT OF THE STATE OF NEVADA

CONTROLLED CONTAMINATION SERVICES, LLC, A DOMESTIC LIMITED LIABILITY COMPANY DOING BUSINESS IN NEVADA; BREMER WHYTE BROWN & O'MEARA, LLP; AND KAREN M. BAYTOSH,
Petitioners,
vs.
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE; AND THE HONORABLE EGAN K. WALKER, DISTRICT JUDGE,
Respondents,
and
JERI FREDERICKS, AN INDIVIDUAL,
Real Party in Interest.

No. 87484

FILED

SEP 11 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges district court orders imposing sanctions and denying a motion for reconsideration.

Real party in interest Jeri Fredericks sued petitioner Controlled Contamination Services, LLC, claiming injuries in a slip and fall. A couple of months before trial, the parties agreed to mediate. At that time, Controlled had a pending motion to reopen discovery so it could conduct an independent medical examination of Fredericks to obtain evidence of Fredericks's current condition. Around the time mediation started,

Controlled's attorney, petitioner Karen Baytosh,[1] directed her staff to contact an investigator to record Fredericks immediately after the mediation to document Fredericks's physical condition. The investigator, Thomas Lafronz, arrived about one hour after the mediation began, and waited outside for more than five hours until Fredericks left the mediation site. Lafronz followed Fredericks and filmed Fredericks on the main hotel-casino floor where she was a guest.

After petitioners disclosed Lafronz's footage, Fredericks moved for sanctions, arguing that petitioners improperly used mediation as a pretext to lure Fredericks to Las Vegas and obtain sub rosa surveillance of Fredericks for use at trial. The district court held an evidentiary hearing on the motion.

The case settled. Thereafter, the district court issued an order concluding that Baytosh engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that was prejudicial to the administration of justice in violation of RPC 4.1(a) and 8.4. The district court found that Baytosh did not approach the settlement negotiations in good faith but instead used negotiation as a tool to obtain a tactical advantage over Fredericks. Even though the case had settled, the district court also precluded Controlled from using any evidence derived from the surveillance. Controlled filed a motion for reconsideration, which the district court denied without considering the arguments therein because Controlled did not separately first request leave to file a motion for reconsideration.

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[1]Baytosh's law firm, Bremer Whyte Brown & O'Meara, LLP (BWBO), is also a petitioner.

Petitioners now seek a writ of mandamus or prohibition. Petitioners ask us to direct the district court to vacate its sanctions order and refrain from entering future sanctions relating to the at-issue conduct. Alternatively, petitioners ask us to direct the district court to vacate its reconsideration order and consider Controlled's motion for reconsideration on the merits.

We deny writ relief as to the district court's sanctions order

"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."[2] *Emerson v. Eighth Jud. Dist. Ct.*, 127 Nev. 672, 676, 263 P.3d 224, 227 (2011) (internal quotation marks omitted). We elect to entertain the petition as it applies to sanctions against Baytosh because an attorney may properly challenge reputational sanctions by writ petition. *See Valley Health Sys., LLC v. Est. of Doe by & through Peterson*, 134 Nev. 634, 643-45, 427 P.3d 1021, 1030-31 (2018), *as corrected* (Oct. 1, 2018). In contrast, we decline to entertain the petition as to the sanction against Controlled. Unlike the reputational sanctions against Baytosh, the exclusionary sanction against Controlled is moot because the case settled. *Id.* at 638 n.1, 427 P.3d at 1026 n.1.

We review the district court's imposition of sanctions for abuse of discretion. *Capriati Constr. Corp. v. Yahyavi*, 137 Nev. 675, 676, 498 P.3d 226, 229 (2021). In so doing, "we will not substitute our judgment for that of the district court" even if "we would not have imposed such sanctions in

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[2]Mandamus, not prohibition, is the appropriate form of writ relief. *Valley Health Sys., LLC v. Est. of Doe by & through Peterson*, 134 Nev. 634, 643-44, 427 P.3d 1021, 1030 (2018), *as corrected* (Oct. 1, 2018).

the first instance." *Valley Health*, 134 Nev. at 639, 427 P.3d at 1027 (internal quotation marks omitted). We will uphold non-case-concluding sanctions that are "supported by substantial evidence," and likewise, we will not set aside findings of fact unless they are clearly erroneous and unsupported. *Id.* We review de novo the district court's interpretation of the rules of professional responsibility. *New Horizon Kids Quest III, Inc. v. Eighth Jud. Dist. Ct.*, 133 Nev. 86, 89, 392 P.3d 166, 168 (2017).

In seeking relief from an exercise of discretion, Baytosh bears a substantial burden "to demonstrate a clear legal right to a particular course of action." *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680, 476 P.3d 1194, 1196 (2020). "[W]e can issue traditional mandamus only where the lower court has *manifestly* abused that discretion or acted arbitrarily or capriciously." *Id.* "[T]raditional mandamus relief does not lie where a discretionary lower court decision result[s] from a mere error in judgment"; rather, "mandamus is available only where the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will." *Id.* at 680-81, 476 P.3d at 1197 (internal quotation marks omitted).

The district court found that Baytosh violated RPCs 4.1(a), 8.4(c), and 8.4(d) by portraying an intent to engage in good faith settlement negotiations and instead using the negotiations as a tool to obtain a tactical advantage over Fredericks. It is reasonably clear that RPC 4.1(a), which states that a lawyer "shall not knowingly [m]ake a false statement of material fact or law to a third person," prohibits such conduct.[3] *See In re*

[3]This discussion applies coextensively to RPC 8.4(c). *See, e.g.*, ABA Formal Opinion 06-439 (2006) (noting that Rule 8.4(c) "does not prohibit conduct that is permitted by Rule 4.1(a)"). Given our conclusions on RPCs

Discipline of Schaefer, 117 Nev. 496, 511-12, 25 P.3d 191, 202 (2001) (explaining that "[t]he touchstone is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the . . . conduct was [prohibited]"). While courts and commentators alike recognize the "legitimate debate regarding which aspects of the negotiation process demand strict adherence to the requirements of candor," it is "not subject to principled argument[that] Rule 4.1(a)[ ] prohibits an attorney from knowingly deceiving a third person, including an opposing counsel, during negotiations" about a fact material to the negotiation. *Ausherman v. Bank of America Corp.*, 212 F. Supp. 2d 435, 448-49 (D. Md. 2002). It is reasonably clear that misrepresenting the purpose of a mediation and concealing a position that one has no intent to settle are prohibited. *Cf. generally Guillory v. Domtar Indus. Inc.*, 95 F.3d 1320, 1334 (5th Cir. 1996) (upholding FRCP 16(f) sanctions based on the party "conceal[ing] its true position that it never intended to settle the case").

Further, substantial evidence supports the district court's findings that Baytosh engaged in such conduct, including pre-mediation emails from Baytosh requesting that Fredericks attend the mediation in person, and Baytosh's actions directing her staff to arrange for sub rosa surveillance. In that regard, the district court concluded that Baytosh took steps toward finding an investigator before the mediation occurred, and certainly before it was clear the case would not settle at mediation. The district court also stated that it did not believe Baytosh's assertion that the purpose of the mediation "had nothing to do with" obtaining surveillance of Fredericks. We do not reweigh this apparent credibility determination. *See*

4.1(a) and 8.4(c), we need not address whether RPC 8.4(d) reasonably clearly prohibited the at-issue conduct.

Ellis v. Carucci, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (explaining that this court does not reweigh the district court's credibility determinations). And the record shows that before mediation, Controlled lacked evidence of Fredericks's current physical condition, which petitioners characterized as "[c]rucial" to Controlled's defense, and which Baytosh acknowledged could be procured by recording Fredericks.

The evidence of misconduct consists of tangible facts from which a legitimate inference may be drawn and adequately supports the district court's conclusions even under a clear-and-convincing-evidence standard of proof. *Matter of Discipline of Arabia*, 137 Nev. 568, 575, 495 P.3d 1103, 1112 (2021) ("To be clear and convincing, evidence need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference . . . may be drawn." (internal quotation marks omitted)); *see Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) ("This court is not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party."). The district court therefore acted within its discretion. *Capriati*, 137 Nev. at 677, 498 P.3d at 229 (concluding that because "substantial evidence supported the district court's sanctions order, it imposed sanctions within its discretion").

Baytosh's argument that sub rosa surveillance is in itself permissible does not change our conclusion because the district court did not sanction Baytosh simply for the act of procuring surveillance. Rather, the district court sanctioned Baytosh for misportraying an intent to mediate as a means to obtain such surveillance. The permissibility of sub rosa surveillance, divorced from the context through which it was obtained, is therefore irrelevant. Further, while we recognize the mediation privilege

could limit a court's ability to meaningfully assess good-faith participation in mediation, the nonprivileged information on which the district court relied adequately supported its findings.

In sum, Baytosh has not shown that the district court manifestly, arbitrarily, or capriciously exercised its discretion, or otherwise satisfied her substantial "burden to demonstrate a clear legal right to a particular course of action."[4] *Walker*, 136 Nev. at 680, 476 P.3d at 1196. As we will not grant extraordinary relief to control the proper exercise of discretion, *State v. Eighth Jud. Dist. Ct. (Zogheib)*, 130 Nev. 158, 161, 321 P.3d 882, 884 (2014), nor to correct errors in judgment, *Walker*, 136 Nev. at 680-81, 476 P.3d at 1197, we deny Baytosh's request for a writ directing the district court to vacate its sanctions order.

We grant writ relief as to the district court's reconsideration order

The petition also seeks relief from the district court's order denying a motion to reconsider the reputational sanctions imposed against Baytosh. Because the order imposing the reputational sanctions is appropriate for review in mandamus, we similarly conclude that our review of the order resolving the related reconsideration motion is appropriate. *See City of Mesquite v. Eighth Jud. Dist. Ct.*, 135 Nev. 240, 243, 445 P.3d 1244, 1248 (2019) (considering issues via a writ petition when judicial economy so warranted). Our intervention is further warranted because judges in the second judicial district court appear to reach inconsistent results on whether a movant must seek leave before filing a motion for reconsideration. *Compare, e.g., Bryant v. Washoe Cnty. Sch. Dist.*, 2009 WL

[4]We have carefully considered the parties' other arguments not specifically addressed and conclude that they either lack merit or would not warrant a different outcome.

8153753 (Second Jud. Dist. Ct. May 27, 2009) (denying a motion for reconsideration because the movant did not first seek leave before requesting reconsideration "in contravention of DCR 13(7)"); *with White v. Ward, MD*, 2020 WL 13304172, at *2 (Second Jud. Dist. Ct. Jan. 24, 2020) (concluding the motion for rehearing could be summarily denied based on the movant's failure to seek leave, but still analyzing the motion "[f]or purposes of judicial economy").

Although we may only grant writ relief from an order denying a motion for reconsideration "if the district court *manifestly* abused its discretion," *R.J. Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 138 Nev. 585, 588-89, 514 P.3d 425, 429 (2022), "[w]e review questions of [rule] interpretation de novo, even in the context of a writ petition." *Id.* at 589, 514 P.3d at 429 (internal quotation marks omitted). Further, a manifest abuse of discretion may result from a "clearly erroneous application of a law or rule." *State v. Eighth Jud. Dist. Ct. (Doane)*, 138 Nev. 896, 899, 521 P.3d 1215, 1220 (2022) (internal quotation marks omitted).

The district court denied Controlled's motion solely because Controlled did not first request leave to file a motion for reconsideration, which the district court concluded was required under WDCR 12(8) and DCR 13(7). We conclude that the district court manifestly abused its discretion in so doing.

WDCR 12(8) states that "[a] party *seeking reconsideration of a ruling of the court* . . . must file a motion *for such relief* within 14 days after service of written notice of entry of the order of judgment, unless the time is shortened or enlarged by order." (Emphases added). The rule only addresses a motion for reconsideration, not a separate motion for leave. Further, the rule ties the 14-day deadline to file a motion for reconsideration

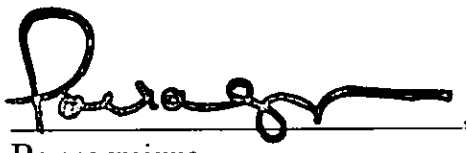
to the notice of entry of the "order or judgment" on which a movant seeks reconsideration, not to the date on which leave is granted to seek reconsideration. And while the district court contemplated a two-motion process, DCR 13(7) only refers to one: "[n]o motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted *upon motion therefor*, after notice of *such motion* to the adverse parties." (Emphases added). Requiring a party to first file a motion for leave to file a motion for reconsideration, and next, upon leave being granted, file a separate motion for reconsideration, is not a requirement that can be clearly found in either rule.

Moreover, Controlled's motion sought relief under DCR 13(7) and WDCR 12(8) and addressed Controlled's position on why the district court should grant reconsideration. Fredericks received notice of the motion and opposed it, including by arguing that leave should not be granted and opposing Controlled's substantive arguments. Denying Controlled's motion merely because the motion was not entitled as one seeking leave improperly elevates form over substance. *Cf. N. Nev. Comstock Invs., LLC v. C&A Invs., LLC*, No. 80824, 2020 WL 5224501, at *1 (Nev. Aug. 31, 2020) (Order Dismissing Appeal) (explaining that a motion for leave for reconsideration that, despite its title, included a "substantive analysis of the basis for reconsideration" and "d[id] not appear to anticipate further argument once an order granting the motion for leave [was] entered" was "effectively . . . a motion for reconsideration"); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 584-85, 245 P.3d 1190, 1194-95 (2010) (construing post-judgment motions for reconsideration based on their substance rather than title to,

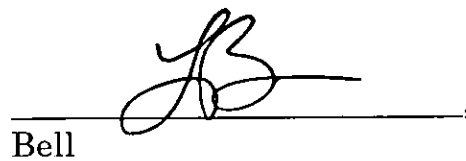
inter alia, avoid confusion and prevent harsh results for unwary parties). We therefore grant petitioners' alternative request for writ relief.

Based on the foregoing, we deny the writ petition in part as to the sanctions order and grant it in part as to the reconsideration order. Accordingly, we direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order denying Controlled's motion for reconsideration and to consider Controlled's motion for reconsideration on the merits. We deny petitioners' request to reassign the matter to a different department. We also deny Fredericks's request to invite the district court to file an answer. NRAP 21(b)(4). We express no opinion on the merit of Controlled's motion for reconsideration.

It is so ORDERED.



_____, J.
Parraguirre



_____, J.
Bell

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Stiglich

cc: Hon. Egan K. Walker, District Judge
Holland & Hart LLP/Las Vegas
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