

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSMAN M. TAHIR, D.O.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK
AND THE HONORABLE KATHLEEN
E. DELANEY,

Respondents,

and


RASHAE FANN AND MAVID
SALGADO, AS CO-ADMINISTRATORS
OF THE ESTATE OF MELANIE
VIOLETTA CLARK, DECEASED;
RESHAE FANN, INDIVIDUALLY AND
AS HEIR OF MELANIE VIOLETTE
CLARKE,

Real Parties in Interest.

No. 90351-COA

FILED

SEP 12 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER GRANTING PETITION
FOR WRIT OF MANDAMUS*

Osman M. Tahir, D.O., brings this original petition for a writ of mandamus challenging a district court order denying a motion to dismiss in part.

Following the death of Melanie Violetta Clarke, real parties in interest Reshae Fann and Mavid Salgado, as co-special administrators of Clarke, and Fann individually as Clarke's heir, filed a civil complaint against Dr. Tahir on December 10, 2023, alleging claims for professional negligence and wrongful death. The complaint alleged that Dr. Tahir failed to properly identify a brain aneurysm and left intracerebral hemorrhage with mass effect in Clarke. In support of the complaint was a declaration by Dr. Michael Jamison, M.D., an interventional cardiologist.

Subsequently, Dr. Tahir filed a motion to dismiss, arguing among other things, that the expert declaration attached to the complaint was non-compliant with NRS 41A.071 because it did not contain a declaration of a medical professional in the same or similar specialty as Dr. Tahir. After a hearing, the district court issued an order granting in part and denying in part Dr. Tahir's motion to dismiss. Although the district court granted the dismissal of the professional negligence claim based on the alleged insufficiency of the expert affidavit, the court denied Dr. Tahir's request to dismiss Fann's wrongful death claim. The district court determined that Fann's individual claim for wrongful death could proceed because "a wrongful death claim does not require the existence of an underlying professional negligence case upon which it is based." Real parties in interest filed a motion for reconsideration, which the district court denied. This original petition for mandamus relief followed.

In his petition, Dr. Tahir argues that the district court erred in not dismissing the remaining wrongful death claim after dismissing the professional negligence claim. Dr. Tahir argues that the remaining individual claim for wrongful death should have also been dismissed because it was solely predicated on professional negligence. We agree.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). Whether a petition for extraordinary writ

¹We note that in their answer to the petition, real parties in interest represented that they were willing to stipulate to dismiss the wrongful death claim.

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). The petitioner bears the burden to show that extraordinary relief is warranted, and such relief is proper only when there is no plain, speedy, and adequate remedy at law. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004). Having considered the petition, answer, and reply, as well as the parties' supporting documentation, we elect to exercise our discretion and consider the petition for a writ of mandamus in the interest of judicial economy and to control a manifest abuse of discretion. *See, e.g., State v. Eighth Jud. Dist. Ct.*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011); *Alemi v. Eighth Jud. Dist. Ct.*, No. 66917, 2016 WL 115651 (Nev. Jan. 7, 2016) (Order Granting Petition for Writ of Mandamus) (granting writ relief and instructing the district court to dismiss a complaint due to a noncompliant affidavit pursuant to NRS 41A.071).

Nevada's wrongful death statute, NRS 41.085(2), provides that "[w]hen the death of any person . . . is caused by the wrongful act or neglect of another, the heirs of the decedent and the personal representatives of the decedent" may maintain a wrongful death claim for "damages against the person who caused the death." To state a wrongful death claim under NRS 41.085(2), a complaint must allege that the defendant's "wrongful act or neglect . . . caused" death. NRS 41.085(2). To that end, the supreme court has explained that wrongful death "require[s] the plaintiff to prove the defendant's liability for the underlying injury to the decedent. In this sense, wrongful death claims brought by statutory heirs always derive from the decedent's underlying injury." *El Jen Med. Hosp., Inc. v. Tyler*, 139 Nev. 322, 332, 535 P.3d 660, 669 (2023).

Here, the district court dismissed the professional negligence claim based on its finding that real parties in interest failed to comply with NRS 41A.071's expert affidavit requirement.² Because the wrongful death claim derives from the professional negligence of Dr. Tahir, it does not exist independently. Specifically, the wrongful death claim asserted that Dr. Tahir "neglected to provide proper diagnosis, care and treatment" for Clarke, and but for Dr. Tahir's diagnosis, care and treatment, Clarke would not have died from the aneurysm. Therefore, the gravamen of this wrongful death claim was based on professional negligence, and thus, once the district court decided to dismiss the professional negligence claim, it was also required to dismiss the wrongful death claim. *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 642, 403 P.3d 1280, 1284 (2017) (stating "[a]llegations of [a] breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for [professional negligence]); *El Jen Med. Hosp., Inc.*, 139 Nev. at 332, 535 P.3d at 669. For these reasons the district court should have dismissed the wrongful death claim at the same time. *See Szymborski*, 133 Nev. at 643, 403 P.3d at 1285. Accordingly, we

²We do not reach the merits of the district court's decision to dismiss the professional negligence claim based on its finding that real parties in interest failed to comply with NRS 41A.071's expert affidavit requirement, as that decision and finding are not before us in this writ petition. Instead, we are solely determining whether, based on the district court's dismissal of the professional negligence claim, the wrongful death claim should likewise be dismissed.

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to dismiss the wrongful death claim without prejudice.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Kathleen E. Delaney, District Judge
Quintairos, Prieto, Wood & Boyer, P.A.
Henriod Law, PLLC
Melanie Hill Law PLLC
Eighth District Court Clerk

³See NRS 41A.071 (dismissal on the basis that a complaint did not comply with the expert medical affidavit requirement must be made “without prejudice”). Insofar as real parties in interest have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for denying writ relief.