



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEIL J. BELLER, ESQ.,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE

DAWN R. THRONE,

Respondents.

No. 91053-COA

ORDER DENYING PETITION FOR A WRIT OF MANDAMUS

Neil J. Beller, Esq., petitions for a writ of mandamus challenging a sanction imposed against him for certain deposition conduct. The underlying matter concerns a minor guardianship, and the resulting litigation was contentious. The district court ultimately affirmed the discovery commissioner's report and recommendation imposing the deposition sanction against Beller, finding that the recommendation to impose the sanction was not clearly erroneous. Petitioner's request for writ relief followed.

This court has discretion in deciding whether to entertain a writ petition seeking extraordinary relief. *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). "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." *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (footnotes and citations omitted); see NRS 34.160. Additionally, an available plain, speedy, and adequate

remedy at law will generally preclude writ relief. NRS 34.170; *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 683, 476 P.3d 1194, 1198 (2020).

Because Beller is not a party to the litigation below, a writ petition is the proper vehicle to challenge the sanction imposed on him. *See Watson Rounds, P.C. v. Eighth Jud. Dist. Ct.*, 131 Nev. 783, 786-87, 358 P.3d 228, 231 (2015) (observing that a petition for writ relief is the proper method for law firms and attorneys to challenge orders imposing monetary sanctions against them); *see also Emerson v. Eighth Jud. Dist. Ct.*, 127 Nev. 672, 676, 263 P.3d 224, 227 (2011) (noting that an attorney may not appeal from a district court order imposing sanctions upon the attorney because the attorney was not a party to the litigation below and therefore permitting the attorney to pursue mandamus relief because there was no other remedy at law to challenge the imposition of sanctions). Accordingly, we exercise our discretion to entertain the petition.

We review the imposition of discovery sanctions for a manifest abuse of discretion. *Walker*, 136 Nev. at 680, 476 P.3d at 1196 (recognizing that “we can issue traditional mandamus only where the lower court has *manifestly* abused [its] discretion or acted arbitrarily or capriciously”); *see also GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (stating appellate courts will generally not reverse the imposition of sanctions “absent a showing of abuse of discretion”). The instant petition only challenges the sufficiency of the evidence supporting the sanction order, not the district court’s “inherent equitable powers” to impose sanctions.¹ *See Young v. Johnny Riberio Bldg., Inc.*, 106 Nev. 88,

¹We need not address the specific rules and/or administrative order under which the sanctions were imposed because Beller does not challenge them in his petition.

92, 787 P. 2d 777, 779 (1990) (quotation marks omitted). In this case, unlike in *Young*, the sanctions were non-case concluding.² Therefore, non-case-concluding sanctions and factual findings will be upheld if supported by substantial evidence. See *Valley Health Sys., LLC v. Est. of Doe by & though Peterson*, 134 Nev. 634, 639, 427 P.3d 1021, 1027 (2018). And substantial evidence “is evidence that a reasonable person may accept as adequate to sustain a judgment.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

Based on the record before us, we conclude that our extraordinary intervention is not warranted in this case. While we recognize that many courts may not have imposed sanctions or the level of sanctions imposed here based on the conduct identified in the record, we cannot say that there was a manifest abuse of discretion in doing so, particularly with the need for civility during the deposition process. See *Walker*, 136 Nev. at 680-81, 476 P.3d at 1196-97 (recognizing “petitioner’s burden to demonstrate a clear legal right to a particular course of action is substantial” as “traditional mandamus relief does not lie where a discretionary lower court decision results from a mere error in judgment” (internal quotation marks and brackets omitted)); see also *Valley Health Sys.*, 134 Nev. at 639, 427 P.3d at 1027 (providing that “[w]hen a district court adopts the factual findings of a discovery commissioner, they are considered findings of the district court . . . even if we would not have imposed such sanctions in the first instance, we will not substitute our

²We note that petitioner argues that the *Young* factors do not support the sanction imposed against him. However, the *Young* factors are properly analyzed when applying a heightened standard of review for a case concluding sanction, which is not at issue here.

judgment for that of the district court.” (internal quotation marks and brackets omitted)). Accordingly, we

ORDER the petition DENIED.

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Bulla, C.J.

A handwritten signature in black ink, appearing to be 'Gibbons', with a horizontal line extending to the right.

Gibbons, J.

A handwritten signature in black ink, appearing to be 'Westbrook', with a horizontal line extending to the right.

Westbrook, J.

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cc: Hon. Dawn Throne, District Judge
Attorney General/Las Vegas
Neil J. Beller, Ltd.
Eighth District Court Clerk