

IN THE SUPREME COURT OF THE STATE OF NEVADA

ST. PAUL MEDICAL LIABILITY
INSURANCE COMPANY; ST. PAUL
FIRE AND MARINE INSURANCE CO.;
AND ST. PAUL MERCURY
INSURANCE COMPANY,
Petitioners,

vs.

DOUGLAS WALTHER, IN HIS
OFFICIAL CAPACITY AS HEARING
OFFICER,

Respondent,

and

THE STATE OF NEVADA
DEPARTMENT OF BUSINESS AND
INDUSTRY, DIVISION OF
INSURANCE, AN ADMINISTRATIVE
AGENCY OF THE STATE OF NEVADA,
Real Party in Interest.

No. 41307

FILED

MAY 13 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT
OF CERTIORARI OR MANDAMUS

Through this original petition for a writ of certiorari or mandamus, petitioners seek to compel a Division of Insurance hearing officer to grant their motion for a prehearing order allowing them to depose witnesses, and to issue subpoenas and subpoenas duces tecum for the depositions, in the underlying administrative proceeding. A writ of certiorari is available to remedy jurisdictional excesses of an inferior tribunal, board or officer exercising judicial functions,¹ while a writ of mandamus is available to compel a public officer to perform a required

¹NRS 34.020(2).

act,² or to control an arbitrary or capricious exercise of discretion.³ Petitions for extraordinary relief are addressed to this court's sound discretion,⁴ and generally may only issue when there is no plain, speedy and adequate remedy at law.⁵

Although it is true that the availability of an appeal does not always preclude writ relief, as petitioners assert, it generally does exactly that.⁶ Petitioners argue that an appeal (judicial review, in this case, with a right of appeal from the district court's decision) would be an inadequate remedy because they are being deprived of the opportunity to make a full and complete record and post-hearing review will be confined to the record. Petitioners' argument is not persuasive. If they are aggrieved by the hearing officer's decision, and seek judicial review, NRS 233B.135(3) authorizes the district court to reverse if petitioners' substantial rights are prejudiced because the decision violates constitutional or statutory provisions, exceeds statutory authority, rests upon unlawful procedure, is legally unsound, lacks evidentiary support or is arbitrary or capricious. If petitioners cannot adequately respond to the charges against them at the hearing because they could not conduct prehearing depositions, they should have no difficulty demonstrating prejudicial error. And after they seek judicial review, petitioners can appeal any adverse decision to this

²NRS 34.160.

³Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁴Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

⁵NRS 34.020(2) (certiorari); NRS 34.170 (mandamus).


⁶Guerin v. Guerin, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998).


court and obtain the review they now seek. Since there has not yet been a hearing, and petitioners may never be aggrieved, review at this stage is not warranted.


In addition, this court has consistently held that extraordinary writs are not available to review a district court's discovery orders, except blanket orders without regard to relevance or orders requiring disclosure of privileged information.⁷ Petitioners have not demonstrated that a different rule should apply to an administrative hearing officer's discovery orders.

Finally, petitioners could have appealed from the district court order dismissing or denying their petition for judicial review, writ of certiorari and writ of mandamus, and thus had an adequate legal remedy. Accordingly, we

ORDER the petition DENIED.⁸


Shearing, J.


Leavitt, J.


Becker, J.

⁷Clark County Liquor v. Clark, 102 Nev. 654, 659, 730 P.2d 443, 447 (1986).

⁸See NRAP 21(b). We deny as moot the real party in interest's motion to dismiss the writ petition, and we disapprove the parties' stipulation to extend the time for petitioners to oppose the motion.

cc: Hon. David Wall, District Judge
Lionel Sawyer & Collins/Las Vegas
Attorney General Brian Sandoval/Carson City
Betty C. Baker
Clark County Clerk