

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD SHOCKLEY, M.D.,
Petitioner,
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
WILLIAM CARNES,
Real Party in Interest.

No. 50841

FILED

MAY 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying petitioner's motion to dismiss an amended complaint that substituted petitioner as a defendant under NRCP 10(a), after the statute of limitations had expired, in a medical malpractice action.

A writ of mandamus is available to compel the performance of an act that the law requires or to control a manifest abuse of discretion.¹ Mandamus is an extraordinary remedy, however, and the decision to entertain such a petition is addressed to our sole discretion.² Generally, this court will not exercise its discretion to consider writ petitions

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

²See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

challenging district court orders that deny motions to dismiss, unless pursuant to clear authority under a statute or rule, the district court is obligated to dismiss the action, or an important issue of law requires clarification.³ Petitions for extraordinary relief generally may only issue when there is no plain, speedy, and adequate remedy at law.⁴ Petitioner bears the burden to demonstrate that our extraordinary intervention is warranted.⁵

Petitioner argues that writ relief is warranted because dismissal was mandatory when real party in interest William Carnes failed to show that he exercised reasonable diligence in ascertaining petitioner's true identity as a potential defendant in the underlying action. In particular, petitioner claims that information regarding his involvement in Carnes' treatment was readily available to Carnes.

Carnes asserts that the district court properly denied petitioner's motion to dismiss because the medical records do not clearly indicate the extent of petitioner's involvement in Carnes' treatment. Thus, it would have been improper to name petitioner as a defendant given the scant reference to him in the medical records. Moreover, Carnes contends that he was misled by defendant Dr. Kathleen Wairimu's deposition testimony, which interfered with Carnes' ability to reasonably ascertain petitioner's role in Carnes' treatment.

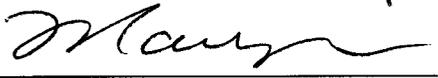
³Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

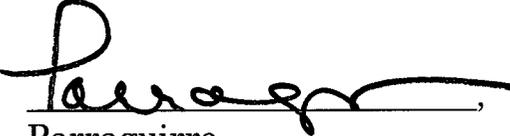
⁴Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

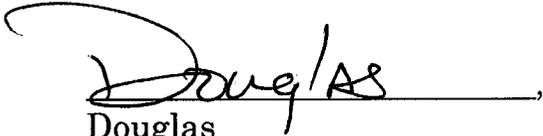
⁵Id. at 228, 88 P.3d at 844.

Having considered this petition, the answer thereto, petitioner's reply,⁶ and supporting documentation, we are not persuaded that our intervention by way of extraordinary relief is warranted. In particular, petitioner has not demonstrated that the district court manifestly abused its discretion in denying petitioner's motion to dismiss.⁷ Accordingly, we

ORDER the petition DENIED.


_____, J.
Maupin


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Mark R. Denton, District Judge
John H. Cotton & Associates, Ltd.
Christensen Law Offices, LLC
Eighth District Court Clerk

⁶Petitioner's motion for permission to file a reply is granted. We direct the clerk of this court to file petitioner's reply provisionally received in this court on April 10, 2008.

⁷Nurenberger Hercules-Werke v. Virostek, 107 Nev. 873, 881, 822 P.2d 1100, 1106 (1991) (providing the elements to be satisfied when a party moves to substitute a previously unknown defendant for a Doe defendant after the statute of limitations has expired).