

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EAGLE TRACE SPE CORPORATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MARK B. BAILUS, DISTRICT JUDGE,
Respondents,
and
BRITTNEY WALLACE,
INDIVIDUALLY,
Real Party in Interest.

No. 74547

FILED

JUN 29 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER GRANTING PETITION
FOR WRIT OF MANDAMUS*

This is an original petition for a writ of mandamus challenging a district court order denying a motion for summary judgment in a negligence action.

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). "Mandamus will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously." *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (citation omitted). "A manifest abuse of discretion is [a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *See State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (internal quotation marks omitted).

Petitions for mandamus are extraordinary remedies, and it is within the discretion of this court to determine if a petition will be considered. *See Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). And we may use our discretion to consider writ petitions when judicial economy is served by considering the petition. *See W. Cab Co. v. Eighth Judicial Dist. Court*, 133 Nev. ___, ___, 390 P.3d 662, 667 (2017). Having considered the parties' arguments and the documents on file herein, we conclude that our extraordinary intervention is warranted. *See Smith*, 107 Nev. at 677, 818 P.2d at 851.

Petitioner Eagle Trace SPE Corporation owned and operated a rental apartment property in which real party in interest Brittney Wallace rented an apartment. Wallace reported a break-in at her apartment. Following the reported break-in, Wallace believed that the men responsible for the break-in were loitering near her apartment again. Wallace followed the men off Eagle Trace property to another property down the road, which was owned by a different entity. At that separate property, Wallace encountered at least one of the men she had followed. Another man then shot Wallace while she was on the separate property. Wallace later sued Eagle Trace, stating a claim for negligence related to Eagle Trace's alleged failure to provide adequate security at her apartment which purportedly lead to Wallace's injury at the separate property.

Eagle Trace moved for summary judgment, arguing that it did not owe a duty to Wallace for the harm that occurred at the separate property, that a third party's crime intervened, and that Wallace voluntarily traveled to confront the alleged burglar on the other property. Wallace opposed the motion and the district court denied summary judgment, stating that Eagle Trace owed a duty to maintain its own

premises in a reasonably safe condition for use and that Eagle Trace's breach of that duty gave rise to the altercation in which Wallace was injured. The district court further stated that, under *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 921 P.2d 928 (1996), Wallace and Eagle Trace have a "special relationship" and Eagle Trace should have reasonably anticipated Wallace's injury off-premises as a result of the break-in at Eagle Trace. We determine that the law requires the opposite result, and we therefore exercise our discretion to consider this petition in the interest of judicial economy to correct this clear error.

"Whether a defendant owes a plaintiff a duty of care is a question of law," *Scialabba*, 112 Nev. at 968, 921 P.2d at 930, which can be resolved on a motion for summary judgment. See *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 296, 255 P.3d 238, 244 (2011). It is well established that there is generally no duty to control a third party's dangerous conduct. See *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280-81 (2009). However, we have recognized a special relationship between a landowner and an invitee that gives rise to a duty of reasonable care. See *Scialabba*, 112 Nev. at 968-69, 921 P.2d at 930. But for that duty of care to apply, the invitee must be limited in their ability to protect themselves, *i.e.*, the landowner must have some control over a person involved in the tort to be liable. See *Sparks*, 127 Nev. at 297, 255 P.3d at 245.

Furthermore, a landowner's "duty to protect from injury caused by a third person is circumscribed by the reasonable foreseeability of the third person's actions." *Scialabba*, 112 Nev. at 969, 921 P.2d at 930. In *Scialabba*, the injury to the plaintiff occurred on property to which the defendant construction company had joint control and which that company

was responsible for securing. *Id.* at 969-70, 921 P.2d at 931. And the supreme court held that it was reasonably foreseeable that a failure to secure the premises could lead to an increased risk in criminal activity in that area. *See generally id.*

Here, we conclude that the district court manifestly abused its discretion by erroneously applying the scope of foreseeability for this negligence claim to include property over which Eagle Trace did not have control. Once Wallace left Eagle Trace's premises, as a matter of law, Wallace cannot establish that Eagle Trace had sufficient control over the premises at which the injury occurred or over the individuals involved in the injury. *See Sparks*, 127 Nev. at 297, 255 P.3d at 245. Eagle Trace could not control Wallace's actions away from its property, nor could it control the acts of others that were away from its property. *See id.* at 297-99, 255 P.3d at 245-46; *see also Rodriguez v. Primadonna Co.*, 125 Nev. 578, 584, 216 P.3d 793, 798 (2009) (holding that a hotel was not liable for a vehicle crash after the driver was evicted from the property). We, therefore, conclude that Eagle Trace did not owe a duty to Wallace to protect her from the actions of others occurring outside of their premises. *See Sanchez*, 125 Nev. at 825, 221 P.3d at 1281 (noting that assigning liability for anonymous members of the public would "create a zone of risk [that] would be impossible to define") (internal quotations and citation omitted). Thus, the district court's denial of Eagle Trace's motion for summary judgment was contrary to the law and a manifest abuse of discretion. *See Armstrong*, 127 Nev. at 932, 267 P.3d at 780. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

district court to enter an order granting summary judgment in favor of appellant.

Silver, C.J.
Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. Mark B. Bailus, District Judge
Smith Larsen & Wixom
Sharp Law Center
Richard Harris Law Firm
Karsaz & Associates
Eighth District Court Clerk