

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANA MICHAUD,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND EIGHTH JUDICIAL  
DISTRICT COURT DEPARTMENT 32,  
Respondents,

and

GEICO CASUALTY COMPANY, D/B/A  
GEICO; AND GEICO INSURANCE  
AGENCY, INC., D/B/A GEICO,  
Real Parties in Interest.

No. 82422-COA

FILED

JUN 28 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *E. Brown*  
DEPUTY CLERK

*ORDER GRANTING PETITION  
FOR WRIT OF MANDAMUS*

This original petition for a writ of mandamus or prohibition challenges a district court order affirming and adopting the discovery commissioner's report and recommendation regarding a protective order.<sup>1</sup>

Petitioner Dana Michaud seeks a writ of mandamus or a writ of prohibition directing the district court to vacate its order adopting the discovery commissioner's report and recommendation and directing the district court to consider whether the discovery requests at issue are

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<sup>1</sup>Although the petition for writ of mandamus or prohibition names the Honorable Rob Bare as a respondent, because Judge Bare is no longer the presiding judge in Department 32, we direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

proportional to the needs of the case and whether good cause exists to issue a protective order. In particular, the challenged order grants real parties in interest (collectively referred to as GEICO) a protective order, concluding that they need not respond to certain requests for admissions. Michaud contends that the discovery commissioner, and the district court in adopting the report and recommendation, failed to make findings regarding proportionality or whether good cause existed to grant the protective order, as required by NRCP 26(b), NRCP 26(c), and this court's opinion in *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 224-29, 467 P.3d 1, 5-8 (Ct. App. 2020).

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 manifest abuse, or an arbitrary or capricious exercise of discretion. See NRS 34.160; *Merits Incentives, LLC v. Eighth Judicial Dist. Court*, 127 Nev. 689, 694, 262 P.3d 720, 723 (2011). "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) (alteration in original) (internal quotation marks omitted). A writ of prohibition may be warranted when a district court acts without or in excess of its jurisdiction. NRS 34.320; *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012). It is within the discretion of the appellate courts to determine whether to entertain a petition for extraordinary relief. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 475, 168 P.3d 731, 737 (2007).



Discovery matters are within the district court's sound discretion and this court will not disturb a district court's discovery ruling absent a clear abuse of discretion. *See Venetian*, 136 Nev. at 224, 467 P.3d at 4. Thus, although "a writ of mandamus may be issued to compel the district court to vacate or modify a discovery order, extraordinary writs are generally not available to review discovery orders." *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 171, 252 P.3d 676, 678 (2011). Accordingly, the appellate courts have typically only issued writs to prevent improper, blanket discovery orders that fail to consider relevancy; discovery orders improperly compelling the disclosure of privileged information; or, sometimes, if an important issue of law needs clarification and public policy would be served by the issuance of a writ. *Okada v. Eighth Judicial Dist. Court*, 131 Nev. 834, 839-40, 359 P.3d 1106, 1110 (2015).

Here, as noted above, Michaud asserts that the discovery order at issue failed to include any findings regarding proportionality and failed to consider whether good cause existed to grant the protective order. GEICO asserts that the district court properly considered the discovery requests in granting the motion for a protective order and that petitioner failed to raise these challenges below, such that they are now waived. Having reviewed the record of the proceedings below provided to this court by the parties, as well as the arguments presented in their respective briefs, we agree with Michaud that the district court's order, which summarily adopts the discovery commissioner's report and recommendation, fails to include any findings regarding proportionality and does not address whether good cause existed to grant the protective order. Although the

record demonstrates that the discovery commissioner summarily concluded that the discovery requests at issue here were not proportional to the needs of the case in her oral decision, nothing in the record or the district court's order includes findings regarding the factors relating to proportionality. And this court has previously held that, in determining whether requested discovery is proportional to the needs of the case, the district court *must* consider the factors enumerated in NRCP 26(b)(1) and make findings related thereto. *Venetian*, 136 Nev. at 225-26, 467 P.3d at 5 (emphasis added).

Thus, because the district court's order does not include any findings, we conclude that writ relief is appropriate and grant the writ of mandamus.<sup>2</sup> *See Venetian*, 136 Nev. at 225-26, 467 P.3d at 5-6; *D.R. Horton*, 123 Nev. at 474-75, 168 P.3d at 736-37. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order granting the protective order and to conduct further proceedings to determine whether the requested discovery is

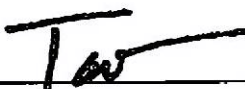
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<sup>2</sup>We note that writs of prohibition are appropriate "to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *see also* NRS 34.320. Because we are not concluding that the district court was without jurisdiction, but are instead compelling the district court to perform the proper analysis and controlling an abuse of discretion, *see* NRS 34.160; *Merits Incentives*, 127 Nev. at 694, 262 P.3d at 723, mandamus relief is more appropriate and we deny Michaud's alternative request for a writ of prohibition.



relevant and proportional under NRCP 26(b)(1), and make the required findings relating thereto. If the discovery is proper, the district court must conduct a good-cause analysis under NRCP 26(c)(1), applying the framework provided in *Venetian*, 136 Nev. at 224-29, 467 P.3d at 5-8.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 32  
Price Beckstrom, PLLC  
Law Offices of James J. Ream  
Winner & Sherrod  
Eighth District Court Clerk

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<sup>3</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this petition.