IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE LINDA LEE WARD REVOCABLE TRUST AGREEMENT DATED JULY 7, 2004.

TANYA SZOKA, INDIVIDUALLY,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE GLORIA STURMAN, DISTRICT JUDGE,
Respondents,
and
RHONDA BREES, AS TRUSTEE OF THE LINDA LEE WARD REVOCABLE TRUST AGREEMENT DATED JULY 7, 2004,
Real Party in Interest.

No. 82783-COA

FILED

NOV 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of prohibition, or in the alternative, mandamus, challenging a district court order compelling discovery.

Petitioner Tanya Szoka is the mother of two minor children, Jacob and Lucas Szoka (the boys), who are the remainder beneficiaries of the Linda Lee Ward Revocable Trust Agreement, dated July 7, 2004 (the trust), created by Tanya's mother, Linda Lee Ward. Several years following Linda's death, Tanya filed a "Petition to Assume Jurisdiction of Trust, to

Confirm Trustee, for Order Compelling Trustee to Account for Trust Assets and for Removal of Trustee or in the Alternative for the Court to Instruct the Trustee," alleging that the successor trustee, real party in interest Rhonda Brees, breached her fiduciary duties to the boys by failing to provide distributions for their health, education, maintenance, and comfortable support as required by the trust.

During the proceedings below, the district court entered a temporary order requiring a monthly distribution of $7,500 for the support of the boys, and also appointed a Guardian Ad Litem (GAL) for the boys and ordered the GAL to examine documentation "garnered on his own or from the parties, [and] to investigate and conduct interviews as may be necessary to determine the financial needs of Lucas and Jacob Szoka in order to set a budget that provides for their health, education, maintenance, and comfortable support in accordance with the terms of the [trust]."

However, before the GAL could begin his investigation, Tanya filed a motion for summary judgment and for a protective order, arguing that the Nevada Supreme Court's recent opinion in *William J. Raggio Family Trust v. Second Judicial District Court*, 136 Nev. 172, 460 P.3d 969 (2020), precluded Brees (as trustee) and the GAL from conducting any discovery or investigation into the boys' financial situation, and asking the district court to issue a protective order preventing any such discovery.

After full briefing on the matter in front of the probate commissioner and in front of the district court, the district court ultimately affirmed the probate commissioner's recommendation that the GAL should have the ability to consider all sources of income in making his report to the

court, but modified the recommendation to clarify that "any and all financial information gathered from the respective parents of [the boys] is to be kept confidential" and submitted to the court in camera. This petition followed.

This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. *See* NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *see also Raggio*, 136 Nev. at 175, 460 P.3d at 972 (stating that "[a] writ of prohibition is the proper remedy to prohibit the district court from compelling a party to disclose privileged or irrelevant discovery"). The decision as to whether a petition for extraordinary writ relief will be entertained rests within this court's sound discretion. *See D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

As relevant here, NRS 163.4175 provides that "[e]xcept as otherwise provided in the trust instrument, the trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets." Our supreme court recently examined an application of this statute in *William J. Raggio Family Trust*, 136 Nev. 172, 460 P.3d 969. In *Raggio*, the supreme court considered whether the petitioner, who was both trustee and life beneficiary of two sub-trusts (a marital trust and a credit shelter trust) created upon the death of her spouse, was required to consider her assets from the credit shelter trust

when making a discretionary distribution to herself from the marital trust. *Id.* at 172-73, 460 P.3d at 971. As part of this litigation, the district court ordered the petitioner to produce an accounting and report any distributions made from the credit shelter trust to discern whether the distributions made from the marital trust were "necessary" for her support. *Id.* at 173-75, 460 P.3d at 971-72.

The petitioner then filed a petition for a writ of prohibition, arguing that neither Nevada law nor the terms of the trust imposed an obligation on her to consider her other assets before making trust distributions. *Id.* at 176, 460 P.3d at 973. Accordingly, the petitioner argued that discovery related to those other assets was irrelevant and requested that the supreme court vacate the district court's order. *Id.* at 175, 460 P.3d at 972.

On review, the supreme court agreed with the petitioner and held that neither the trust instrument nor Nevada law required the trustee to consider the beneficiary's other assets before making distributions from the trust. *Id.* at 173, 460 P.3d at 971. Accordingly, the supreme court noted that "[t]he district court should have begun its analysis from the position that [the petitioner] was not obligated to consider her other assets or resources before making a distribution" instead of assuming that the decedent would have wanted the petitioner to "preserve" some of the marital trust corpus for his daughters. *Id.* at 178, 460 P.3d at 974-75. Because the district court ignored NRS 163.4175's directive that a trustee is not required to consider other assets unless otherwise stated in the trust instrument, and because the plain language of the trust instrument at issue in that case

did not state that the petitioner was required to consider her other assets before making a distribution to herself, the supreme court held that discovery relating to those assets was irrelevant and issued a writ of prohibition directing the district court to vacate its order compelling discovery concerning those assets. *Id.* at 178-79, 460 P.3d at 974-75.

In her petition, Tanya argues that the supreme court's opinion in *Raggio* conclusively determined that, under NRS 163.4175, examination of a beneficiary's other sources of income is irrelevant in a legal proceeding unless a trust document expressly states that the trustee is to consider such information.[1] We disagree.

Nothing in the *Raggio* opinion or NRS 163.4175 indicates a broad holding prohibiting discovery regarding a beneficiary's assets. Indeed, *Raggio*'s holding is limited to the "narrow question" of whether the petitioner, as trustee, had an obligation to consider her assets in the credit shelter trust before making distributions from the marital trust, 136 Nev. at 176, 460 P.3d at 973, and the supreme court clarified that, under NRS 163.4175, the district court cannot order a trustee to consider a beneficiary's assets without authorization from the plain language of the trust, *id.* at 178-79, 460 P.3d at 975. Thus, contrary to Tanya's assertions, our supreme

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[1]The parties also present arguments related to the nature of the trust under NRS 163.4185, and whether the boys would have an enforceable right to distributions under that statute. We decline to address these arguments in this petition and express no opinion as to whether the trust should be classified as a support trust or discretionary trust under NRS 163.4185, as this is a determination best made by the district court in the first instance. *See D.R. Horton*, 123 Nev. at 474-75, 168 P.3d at 736-37.

court did not issue a broad mandate that prohibits an investigation into a beneficiary's other resources, but rather determined that a district court cannot force a trustee to conduct such an investigation.

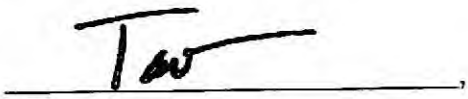
Accordingly, we conclude that the supreme court's holding in *Raggio* is distinguishable from the instant case. Here, the trustee, acting in her own discretion, desires to review the beneficiaries' financial information in order to administer the trust, and, on the trustee's motion, the district court has ordered the GAL appointed in this matter to investigate the beneficiaries' financial information to facilitate the trustee's efforts and provide a neutral opinion as to what support the beneficiaries require. This is different from the scenario in *Raggio*, where the district court imposed an obligation on the trustee not required by the trust or statute. *Id.* at 178-79, 460 P.3d at 975. As Brees notes in her answer, this interpretation is further supported by the plain language of NRS 163.4175, which similarly does not prohibit a trustee from examining a beneficiary's other resources, but instead simply notes that a trustee is "not required" to do so.

For the foregoing reasons, we conclude that the district court did not abuse its discretion when it ordered the GAL to investigate the boys' "financial situation." Moreover, because Tanya did not present argument (outside of her interpretation of *Raggio*) sufficient to demonstrate that the discovery in this case is privileged or otherwise irrelevant, *see Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev. 369, 374, 399 P.3d 334, 341 (2017), or to demonstrate that this discovery order would cause irreparable harm, *see Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*,

128 Nev. 224, 228, 276 P.3d 246, 249 (2012), we conclude that Tanya has failed to demonstrate that our extraordinary intervention is warranted, *see Pan*, 120 Nev. at 228, 88 P.3d at 844; *Smith*, 107 Nev. at 677, 818 P.2d at 851. Accordingly, we deny the petition. NRAP 21(b)(1).

It is so ORDERED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Gloria Sturman, District Judge
Blackrock Legal, LLC
Goldsmith & Guymon, P.C.
Roger A. Giuliani
Eighth District Court Clerk