

IN THE SUPREME COURT OF THE STATE OF NEVADA

STACY TYLER, INDIVIDUALLY, AS
SPECIAL ADMINISTRATOR FOR THE
ESTATE OF GARY TYLER, AND AS
LEGAL GUARDIAN FOR OMEGA
TYLER, A MINOR; AZIAH TYLER, AS
STATUTORY HEIR TO GARY TYLER;
AND HEAVEN TYLER, AS
STATUTORY HEIR TO GARY TYLER,
Petitioners,

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,

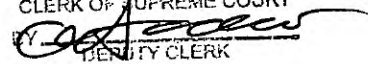
and

EL JEN MEDICAL HOSPITAL, INC.,
D/B/A EL JEN CONVALESCENT
HOSPITAL AND RETIREMENT
CENTER, A DOMESTIC
CORPORATION; TOOMEY REAL
ESTATE, LLC, A NEVADA LIMITED
LIABILITY COMPANY, A DOMESTIC
LIMITED LIABILITY COMPANY; AND
JAMES TOOMEY, AN INDIVIDUAL,
Real Parties in Interest.

No. 84917

FILED

SEP 25 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

DEPUTY CLERK

ORDER DENYING PETITION

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

Petitioners are the estate and statutory heirs of Gary Tyler (the decedent), who allegedly died due to a fall he suffered while under the care

of real party in interest El Jen Convalescent Hospital and Retirement Center (El Jen). In the underlying case, petitioner Stacy Tyler asserted wrongful death claims under NRS 41.085 individually and on behalf of the decedent's estate and her minor child, and was joined by the decedent's other adult statutory heirs (collectively, the Tylers). El Jen moved to compel all claims to arbitration based on an arbitration agreement that Stacy Tyler signed during the decedent's admission to El Jen pursuant to two preexisting powers of attorney. The district court compelled arbitration of the estate's claim after finding that El Jen relied on Stacy Tyler's power of attorney in good faith. The Tylers now petition for a writ of mandamus and/or prohibition to declare the arbitration agreement void and unenforceable, vacate the estate's arbitration proceedings, and direct all claims to proceed before the district court.

The grant or denial of extraordinary writ relief is entrusted to this court's discretion. *Archon Corp. v. Eighth Judicial Dist. Court*, 133 Nev. 816, 821, 407 P.3d 702, 707 (2017); *State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360 & n.2, 662 P.2d 1338, 1339 & n.2 (1983). Mandamus relief is available where a petitioner demonstrates both a legal right to a particular action that is the plain legal duty of the lower court to perform and the absence of an adequate and speedy legal remedy other than writ review. *Archon Corp.*, 133 Nev. at 819-20, 407 P.3d at 706. In rare cases, advisory mandamus may also lie "where a petitioner present[s] legal issues of statewide importance requiring clarification, and our decision . . . promote[s] judicial economy and administration by assisting other jurists, parties, and lawyers." *Walker v. Second Judicial Dist. Court*, 136 Nev. 678, 683, 476 P.3d 1194, 1198 (2020) (omission in original) (internal quotation marks omitted). Although petitioners alternatively petition for a writ of prohibition, we decline to consider a writ of prohibition

because petitioners do not support their claim that the district court acted without or in excess of its jurisdiction. *See Archon*, 133 Nev. at 819, 407 P.3d at 706.

We are not convinced by petitioners' argument that an eventual appeal is not an adequate remedy because proceeding with arbitration in error may prove unnecessary and a waste of resources. NRS 38.247(1) does not authorize immediate interlocutory appeals from orders compelling arbitration, because "error in ordering arbitration may be reviewed on appeal from the final judgment or order confirming or vacating the award, eventual appellate review that the Uniform Arbitration Act deems adequate and appropriate." *Tallman v. Eighth Judicial Dist. Court*, 131 Nev. 713, 718-19, 359 P.3d 113, 117 (2015) (internal citations omitted). And the burden of simultaneous arbitration and litigation is characteristic of any arbitration where only some parties or claims are subject to the arbitration and therefore does not establish an independent basis to conclude that an eventual appeal is not an adequate remedy. *Cf. Cal. Crane Sch., Inc. v. Google LLC*, 621 F. Supp. 3d 1024, 1033-34 (N.D. Cal. 2022) (declining to stay claims related to claims proceeding to arbitration absent compelling reasons other than the possibility of parallel proceedings).


Even if petitioners met their burden to explain why an eventual appeal would not afford them an adequate legal remedy, petitioners still must demonstrate exceptional circumstances warranting "writ relief, i.e., that mandamus is needed to compel the performance of an act that the law requires or to control a manifest abuse of discretion by the district court." *Tallman*, 131 Nev. at 719, 359 P.3d at 118 (internal quotation marks omitted). Petitioners argue that the district court erred in compelling arbitration of the estate's claims since Stacy Tyler did not have legal authority to bind the estate. "Generally, the existence of an agency

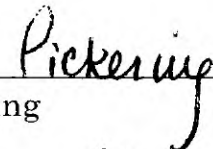
[authority] is a question of fact,” which we will uphold if the district court’s determination of that authority is not clearly erroneous and is supported by substantial evidence. *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. 540, 549, 331 P.3d 850, 856 (2014). And as we discussed in *El Jen Medical Hospital, Inc. v. Tyler*, 139 Nev., Adv. Op. __, __ P.3d __ (2023), even if the powers of attorney were invalid, the evidence in the record supports the district court’s finding of El Jen’s good faith reliance on her powers of attorney under NRS 162A.360(2). We conclude that the district court did not manifestly abuse its discretion in compelling the estate to arbitration based on this finding of fact.


We also decline to consider petitioners’ remaining argument for an advisory writ. Although petitioners argue that the validity of the powers of attorney under NRS Chapter 162A presents a question of first impression, the district court made no findings as to the validity of her powers of attorney under the statute. Instead, the district court expressed that, even crediting petitioner’s challenge to the powers of attorney, they were effective given El Jen’s good faith reliance on them. *See* NRS 162A.360(2); NRS 162A.815(2).

For these reasons, we

ORDER the petition DENIED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Gloria Sturman, District Judge
Cameron Law
J. Cogburn Law
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk