IN THE SUPREME COURT OF THE STATE OF NEVADA

RHONDA ROE 1; AND RHONDA ROE 6,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK,
Respondent,
and
LILY SHEPARD; JANE DOE DANCER I; JANE DOE DANCER II; JANE DOE DANCER III; JANE DOE DANCER IV; JANE DOE DANCER V; AND SHAC, LLC, A DOMESTIC LIMITED-LIABILITY COMPANY,
Real Parties in Interest.

No. 86448

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order denying a motion to intervene in a class action matter involving minimum wage claims.

Real parties in interest Lily Shepard and Jane Doe Dancers I-V (collectively, Shepard) filed the underlying action against real party in interest SHAC, LLC, asserting minimum-wage claims. They sought certification of a class, which the district court granted in 2018. In the district court's order, it included in the class any proposed members "who are not subject to agreements with [SHAC] to arbitrate their claims." After that order was entered, petitioners Rhonda Roe 1 and 6 (collectively, Roes) signed agreements with SHAC wherein they agreed to arbitrate any claims they had against SHAC.

In 2021, Shepard and SHAC agreed to a class action settlement. In July 2021, the district court entered an order preliminarily approving the settlement and affording class members 45 days in which to submit a claim, object to the settlement, or opt out of the settlement. In October 2021, Roes moved to intervene in the underlying matter. As relevant here, they argued that the arbitration agreements they signed *after* the district court's 2018 order granting class certification were legally insufficient to remove them from the class, as the above-quoted language from the district court's 2018 order contemplated excluding only those would-be members who had signed arbitration agreements *before* class certification was granted. In December 2021, the district court denied Roes' motion. In March 2022, the district court denied Roes' motion to reconsider the December 2021 order. Finally in September 2022, the district court entered an order approving the class-action settlement wherein it again rejected Roes' arguments in support of intervention. This writ petition followed.

We elect to entertain the merits of Roes' writ petition because they have no other adequate means to challenge the district court's denial of their request to intervene in the underlying action. *See Am. Home Assurance Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1234, 147 P.3d 1120, 1124 (2006) (recognizing that a writ petition is the proper means by which to challenge the denial of a request to intervene). Nonetheless, we conclude that Roes have not met their burden to demonstrate that writ relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the petitioner carries the burden of demonstrating that writ relief is warranted).

"This court may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an

office or where discretion has been manifestly abused or exercised arbitrarily or capriciously." *Scarbo v. Eighth Judicial Dist. Court*, 125 Nev. 118, 121, 206 P.3d 975, 977 (2009) (quoting *Redeker v. Eighth Judicial Dist. Court*, 122 Nev. 164, 167, 127 P.3d 520, 522 (2006)); *see* NRS 34.160. This court has previously equated a "manifest abuse of discretion" with "'[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.'" *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (alteration in original) (quoting *Steward v. McDonald*, 958 S.W.2d 297, 300 (Ark. 1997)).

Here, the district court denied Roes' motion to intervene because it disagreed with Roes' proffered interpretation of the 2018 class-certification order, among other reasons. Namely, the district court concluded that the order's above-quoted language did not preclude SHAC from obtaining arbitration agreements with class members *after* the order was entered to remove would-be class members from the class. Roes presented no authority to the district court—much less controlling authority—to suggest that the district court's interpretation was "a clearly erroneous application of a law or rule."[1] *Armstrong*, 127 Nev. at 932, 267 P.3d at 780 (internal quotation marks omitted). Accordingly, we are not persuaded that the district court arbitrarily or capriciously exercised its

[1]For the first time in their writ petition, Roes rely on *H&R Block, Inc. v. Haese*, 82 S.W.3d 331, 336 (Tex. App. 2000), and *Kleiner v. First National Bank of Atlanta*, 751 F.2d 1193, 1198 (11th Cir. 1985), as support for their argument that the district court's 2018 class-certification order prohibited SHAC from signing arbitration agreements with Roes to thereafter exclude them from the class. While we recognize that those cases lend some support to Roes' position, neither case stands directly for Roes' proposition such that the district court—even if it had been presented with those cases—made a clearly erroneous application of the law.

discretion so as to warrant this court's intervention by way of writ relief. *Scarbo*, 125 Nev. at 121, 206 P.3d at 977. We therefore

ORDER the petition DENIED.

_____, C.J.
Stiglich

_____, J.
Cadish

LEE, J., dissenting:

I respectfully dissent, as I would grant petitioners writ relief insofar as they seek to submit claims as members of the certified class. The district court's April 27, 2018, order granting class certification defines the class, in relevant part, as follows: "All persons who work or have worked at [SHAC] as dancers . . . and *who are not subject to agreements* with [SHAC] to arbitrate their claims." (Emphasis added). In my view, the use of the word "are" clearly contemplates excluding only those dancers who were subject to arbitration agreements *at the time the order was entered*. *See Merriam-Webster's Collegiate Dictionary*, https://www.merriam-webster.com/dictionary/are (defining "are" as the "*present tense* second-person singular and present tense plural of BE" (emphasis added)).

Even if the class-certification order's language were subject to different interpretations, which it is not, there is no indication in the record that either the class representatives, SHAC, or the district court contemplated the possibility that SHAC could rightfully procure arbitration agreements from already-eligible class members to thereafter exclude them

from the eligible class. Thus, I believe that the district court judge who entered the final judgment denying petitioners' motion to intervene erroneously interpreted the 2018 class-certification order.[2] *See Oxbow Constr. v. Eighth Judicial Dist. Court*, 130 Nev. 867, 875, 335 P.3d 1234, 1240 (2014) ("When a district court's order is unclear, its interpretation is a question of law that we review de novo."). I would therefore grant writ relief and allow petitioners to submit claims consistent with the terms of the class-action settlement.

_____, J.
Lee

cc: Chief Judge, Eighth Judicial District Court
Department 11, Eighth Judicial District
Leon Greenberg Professional Corporation
Greenberg Traurig, LLP/Las Vegas
Bighorn Law/Las Vegas
Lewis Roca Rothgerber Christie LLP/Las Vegas
Eighth District Court Clerk

[2]The judge who entered the class-certification order was different from the judge who entered the final judgment.