

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY A. FELDMAN AND PENNY I.  
FELDMAN,  
Petitioners,

No. 41560

vs.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE, AND THE HONORABLE  
JANET J. BERRY, DISTRICT JUDGE,

**FILED**

FEB 11 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

Respondents,

and

DEMARIS JANE-KAY GULLEKSON,  
Real Party in Interest.

ORDER DENYING PETITION FOR WRIT  
OF PROHIBITION OR MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order that granted a motion to compel petitioner to undergo an examination by a vocational rehabilitation expert.

Petitioner Jeffrey Feldman was injured in a car accident with real party in interest Demaris Gullekson. Feldman sustained severe injuries to his right hand and wrist, and has undergone multiple surgeries. Feldman sued Gullekson for damages arising out of the accident, including a significant claim for economic losses. In particular, Feldman alleged that as a result of the accident he lost his job as Vice President of Sales for NIC Conquest, he is permanently disabled and unable to work, and he suffered future lost wages in excess of \$1,000,000.

During the course of discovery, Gullekson moved to compel Feldman to undergo a vocational rehabilitation examination to evaluate Feldman's economic loss claim. A vocational rehabilitation expert evaluates the impact of a personal injury on an individual's employment

options through personal interviews and vocational tests. Feldman opposed the motion, but the district court granted it. This petition for writ relief followed.

This court may issue a writ of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion.<sup>1</sup> A writ of prohibition may be issued to compel a government body or official to cease performing acts beyond its legal authority.<sup>2</sup> Neither mandamus nor prohibition will issue when the petitioner has a plain, speedy, and adequate remedy at law.<sup>3</sup> However, because writs of mandamus and prohibition are extraordinary remedies, whether a petition will be considered is entirely within this court's discretion.<sup>4</sup>

Generally, this court will not review, through petitions for extraordinary relief, alleged errors in discovery pertaining to matters within the lower court's jurisdiction, and generally the aggrieved party must wait to raise the issue on direct appeal from any adverse final judgment.<sup>5</sup> However, this court has granted extraordinary relief to prevent improper discovery in two situations when disclosure would cause irreparable injury: 1) blanket discovery orders without regard to

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<sup>1</sup>NRS 34.160; Washoe County Dist. Attorney v. Dist. Ct., 116 Nev. 629, 5 P.3d 562 (2000).

<sup>2</sup>NRS 34.320; Ashokan v. State, Dep't of Ins., 109 Nev. 662, 856 P.2d 244 (1993).

<sup>3</sup>NRS 34.170; NRS 34.330

<sup>4</sup>Barnes v. District Court, 103 Nev. 679, 748 P.2d 483 (1987).

<sup>5</sup>Schlatter v. District Court, 93 Nev. 189, 561 P.2d 1342 (1977).

relevance, and 2) discovery orders requiring disclosure of privileged information.<sup>6</sup>

This case does not fit within these exceptions, as the information sought by Gullekson does not appear to be privileged or confidential. In addition, the information sought is relevant to Feldman's damages claims. And significantly, Feldman makes no claim that the vocational rehabilitation exam would cause him irreparable harm. Therefore, we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time.

Accordingly, we deny the petition.<sup>7</sup>

It is so ORDERED.

Becker J.  
Becker

Agosti J.  
Agosti

Gibbons J.  
Gibbons

cc: Hon. Janet J. Berry, District Judge  
Raleigh, Hunt & McGarry  
Lemons Grundy & Eisenberg  
Molof & Vohl  
Washoe District Court Clerk

<sup>6</sup>Hetter v. District Court, 110 Nev. 513, 515, 874 P.2d 762, 763 (1994).

<sup>7</sup>See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).