

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Jeffrey Reed,  
Petitioner,  
vs.  
The Eighth Judicial District Court of the  
State of Nevada, in and for the County of  
Clark, and the Department "H" District  
Court Judge T. Arthur Ritchie, Jr.,  
Respondents,  
Alecia Reed nka Draper and Aleica  
Draper, as Conservator of Emily Reed,  
Real Parties in Interest.

) Supreme Court Number:  
) District Court Case No. 95D338698  
) Electronically Filed  
) Aug 04 2020 03:33 p.m.  
) Elizabeth A. Brown  
) Clerk of Supreme Court

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**WRIT OF MANDAMUS OR, IN THE ALTERNATIVE,  
WRIT OF PROHIBITION**

Amanda M. Roberts, Esq.  
**ROBERTS STOFFEL FAMILY  
LAW GROUP**  
Nevada Bar No. 9294  
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Attorney for Petitioner, Jeffrey Reed

### **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1 and must be disclosed: There is no corporation or parent corporation to be disclosed and there are no publicly held companies that must be disclosed.

These representations are made in order that the judges of this court may evaluate possible disqualification of recusal.

DATED this 4<sup>th</sup> day of August, 2020.

### **ROBERTS STOFFEL FAMILY LAW GROUP**

By: Amanda M. Roberts

Amanda M. Roberts, Esq.  
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Attorneys for Petitioner, Jeff Reed

## **ROUTING STATEMENT**

This case is should be heard by the Nevada Court of Appeals pursuant to NRAP 17(b)(10) because this is a family law matter other than a termination of parental rights matter. This statement is made pursuant to NRAP 28(a)(5).

### **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this Writ complies with the formatting requirements of *NRAP* § 32(a)(4), the typeface requirements of *NRAP* § 32(a)(5) and the type style requirements of *NRAP* § 32 (a)(6) because:
  - i. This Writ has been prepared in a proportionally spaced typeface using Microsoft Office 360 in 14 font using Times New Roman.
2. I further certify that this Writ complies with the page- or type-volume limitations of *NRAP* § 32 (a)(7) because, excluding the parts of the Writ exempted by *NRAP* § 32 (a)(7)(C), it is either:
  - i. It exceeds 15 pages, but is only 4,663 words and 518 lines.
3. Finally, I hereby certify that I have read this Writ, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular *NRAP* § 28(e)(1), which requires every assertion in the Writ regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

accompanying Writ is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 4<sup>th</sup> day of August, 2020.

**ROBERTS STOFFEL FAMILY LAW GROUP**

By: Amanda M. Roberts

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Attorneys for Defendant, Jeff Reed

**AFFIDAVIT OF AMANDA M. ROBERTS, ESQ., PURSUANT  
TO NRAP § 21 (a)(5) IN SUPPORT OF WRIT**

STATE OF Nevada )


COUNTY OF Clark )

AMANDA M. ROBERTS, ESQ., being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of Nevada.
2. I am employed by the Roberts Stoffel Family Law Grou.
3. I am the attorney for Petitioner, Jeffrey Reed, in this matter.
4. I have read the above Petition for Writ of Mandamus or Prohibition

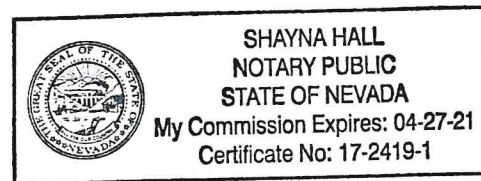
and know the contents thereof as true, except as to the matters that are stated therein on my information and belief, and as to those matters, I believe them to be true.

DATED this 4<sup>th</sup> day of August, 2020.

  
Amanda M. Roberts, Esq.

SIGNED and SWORN to before me  
this 4<sup>th</sup> day of August, 2020.

  
NOTARY PUBLIC in and for said  
County and State



**NRAP 27 (e) CERTIFICATE**

1. I make this certificate in compliance with *NRAP* § 27 (e).
2. I am an attorney duly licensed to practice law in the State of Nevada.
3. There is no plain, speedy, and adequate remedy in the ordinary course of law available to the Petitioner.
4. I hereby certify that I have read the preceding Petition for Writ of Mandamus or Prohibition, and to the best of my knowledge, information, and belief, it is not frivolous, or interposed for any improper purpose.
5. Alecia Draper as Conservator for Emily Reed is represented by Elizabeth Brennan, Esq., whose address is 1980 Festival Plaza Drive, Suite 300, Las Vegas, Nevada, 89135; whose telephone number is (702) 834-8888; and whose email address is [elizabeth@brennanlawfirm.com](mailto:elizabeth@brennanlawfirm.com).
6. An attempt was made via email to contact Elizabeth Brennan, Esq., regarding the filing and service of the Writ. Due to COVID-19, it is unknown if she is in the office; however, service will be attempted at her physical office address and through electronic service via email. She agreed via email to sign an Acceptance of Service by way of an email.
7. Alecia Draper, individually, is represented by Benjamin La Luzerne, Esq., of La Luzerne Law, 2449 N. Tenaya Way, #36306, Las Vegas, Nevada,

89128; whose telephone number is (702) 268-5708; and whose email address is ben@laluzernelaw.com.

8. Mr. La Luzerne will be served electronically through the eservice system.

9. The District Court Judge hearing this matter is T. Arthur Ritchie, Jr., whose address is 200 Lewis Ave., Third Floor, Las Vegas, Nevada, 89155; and the telephone number is (702) 671-0832.

10. Upon filing, if permission is granted to enter the Regional Justice Center at 200 Lewis Ave., Las Vegas, Nevada, 89155, personal service will be attempted and same will be served upon the Court via email to the Judge's staff at rford@clarkcountycourt.us and krausch@clarkcountycourts.us.

11. The District Court Judge was also mailed a copy of the Writ.

12. The Writ has not been served as of the time of filing, but will be promptly served on August 4, 2020.

13. The Trial in this matter is set on August 6, 2020 and August 17, 2020. Therefore, an emergency exists and harm will come to Petition if this Writ is not ruled upon in less than fourteen (14) days.

14. The claims made herein were submitted to the District Court and either not ruled upon or denied without hearing or consideration.



15. The Court denied the Motion to Continue by way of an email on Sunday, August 2, 2020; therefore, the Writ is being made on the earliest possible day being the next business day.

16. Contemporaneous with this Writ, an Ex Parte Motion for Stay is being filed in the District Court.

DATED this 4<sup>th</sup> day of August, 2020.

  
Amanda M. Roberts, Esq.

COMES NOW the Petitioner, Jeffrey Reed (“Jeff”) by and through his attorney, Amanda M. Roberts, Esq., of Roberts Stoffel Family Law Group. The Petitioner respectfully request this Court for a writ to compel performance of an act and/or control an arbitrary or capricious exercise of discretion by the District Court.

Specifically, the Petitioner contends that the Department “H” District Court Judge is impacting Jeff’s due process rights in this matter by moving forward with the Evidentiary Hearing scheduled on August 6, 2020 and August 7, 2020 based upon the following: (1.) failing to rule on Jeff’s discovery related Motion which was timely filed during the COVID-19 pandemic and before the close of discovery related to documents not produced by Alecia, but which were relied upon by her alleged expert; (2.) failing to consider Jeff’s Motion to continue based upon the outstanding discovery which was unable to be completed during the tolling period due to the COVID-19 pandemic; (3.) failing to continue the Evidentiary Hearing scheduled on August 6, 2020 and August 7, 2020, so that the Parties can participate in person due to Alecia’s intent to call an expert witness and because of the voluminous amount of proposed Exhibits designated by Alecia

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which consist of 2,385 pages of documents including medical records, and instead ordering that the Evidentiary Hearing move forward via Blue Jeans above Jeff's objection.

**I.**  
**SUMMARY OF WRIT**

On December 9, 2014, Alecia filed a Motion with the Court regarding custody of the three (3) children and resetting of child support based upon a change in the custodial arrangement.<sup>1</sup> At that time, one of the children, Emily, had already reached the age of eighteen (18), but she was still in high school.<sup>2</sup> Alecia's Motion did not include a request for child support for Emily upon graduation from high school, but at the hearing her Counsel argued for same and the matter was set for an Evidentiary Hearing.<sup>3</sup> Jeff alleges the Evidentiary Hearing was set to determine if Emily was disabled prior to reaching the age of eighteen (18).<sup>4</sup>

On January 12, 2015, the Parties appeared before the Court on Alecia's Motion and Jeff's Opposition.<sup>5</sup> At that time, it was agreed that Jeff would pay child support in the amount of \$1,450.00 for three (3) children ( $\$60,000.00/12 =$

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<sup>1</sup> Appendix at Volume I, Pages PET0001 through PET0099.

<sup>2</sup> Appendix at Volume I, Pages PET0003.

<sup>3</sup> Appendix at Volume I, Pages PET0001 through PET0099.

<sup>4</sup> Appendix at Volume I, Pages PET0120.

<sup>5</sup> Appendix at Volume I, Pages PET0119 through PET0123

\$5,000.00 x .29 (statutory child support for three (3) children).<sup>6</sup> This was because, although Emily had reached the age of eighteen (18), she remained in high school at that time.<sup>7</sup> In addition, the Court set an Evidentiary Hearing to determine whether Emily was disabled prior to reaching the age of eighteen (18) with the Evidentiary Hearing set before Emily graduated from high school because the Court and Alecia's Counsel believed that the issue must be resolved prior to Jeff's obligation for Emily ceasing.<sup>8</sup> Moreover, the Parties entered into a stipulated agreement that on or before February 23, 2015, at 5:00 p.m., Alecia would provide "proof of the minor child being disabled, meeting the standards required[.]"<sup>9</sup> The Order also included language which stated, "The Therapist's Report will be accepted, in lieu of the therapist appearing at the day of trial."<sup>10</sup>

Thereafter, before the Evidentiary Hearing, on March 9, 2015, Alecia filed a "Notice of Withdrawal of Request to Continue Child Support for Emily After High School Graduation Due to Child's Disability & Request to Vacate Evidentiary Hearing."<sup>11</sup> It is worth noting that this was voluntarily filed, not a stipulated

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<sup>6</sup> Appendix at Volume I, Pages PET0122 and PET0129.

<sup>7</sup> Appendix at Volume I, Pages PET0122.

<sup>8</sup> Appendix at Volume I, Pages PET0122.

<sup>9</sup> Appendix at Volume I, Pages PET0127.

<sup>10</sup> Appendix at Volume I, Pages PET0129.

<sup>11</sup> Appendix at Volume I, Pages PET0124 through PET0125.

agreement. As a result of this document being filed, the Evidentiary Hearing was vacated.

On June 26, 2017, Jeff filed a Motion to reset child support based upon the emancipation of the Parties' child.<sup>12</sup> On July 21, 2017, Alecia filed an Opposition to reset the child support and a Countermotion seeking child support for the Parties' emancipated daughter, Emily.<sup>13</sup> At that time, Emily was twenty (20) years old.<sup>14</sup> On August 24, 2017, Jeff filed a Reply and Opposition to Alecia's request for support for Emily after emancipation claiming that he disputed Emily was disabled at the time she reached emancipation based upon *NRS* § 125.110 (4).

On August 28, 2017, the Court heard the pending Motions.<sup>15</sup> At the time, Judge Ochoa was hearing the matter.<sup>16</sup> Judge Ochoa granted Jeff's request and declined to rule on the requests regarding Emily, but the Court did set a status check hearing on the issue for November 8, 2017.<sup>17</sup>

On November 8, 2017, Judge Ochoa conducted a return hearing.<sup>18</sup> At that time, Judge Ochoa Ordered a Motion for Summary Judgment to be filed by Jeff,

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<sup>12</sup> Appendix at Volume I, Pages PET0130 through PET0142.

<sup>13</sup> Appendix at Volume II, Pages PET0143 through PET0377.

<sup>14</sup> Appendix at Volume II, Pages PET0378 through PET0392.

<sup>15</sup> Appendix at Volume III, Pages PET0393 through PET0403.

<sup>16</sup> Appendix at Volume III, Pages PET0393 through PET0403.

<sup>17</sup> Appendix at Volume III, Pages PET0398.

<sup>18</sup> Appendix at Volume III, Pages PET0404 through PET0405.

and that Alecia would file an Opposition and Countermotion.<sup>19</sup> In accordance with the Order, on January 2, 2018, Jeff's Counsel filed a Motion for Summary Judgment and requested an Order Shortening Time.<sup>20</sup> On February 8, 2018, Alecia filed an Opposition to the Motion for Summary Judgment.<sup>21</sup> On April 9, 2018, Jeff filed a Reply.<sup>22</sup> A hearing on the Motion for Summary Judgment went forward on April 9, 2018, and the Court took the matter under submission.<sup>23</sup> On May 22, 2018, Judge Ochoa issued his Decision and Order which denied the request for summary judgment, but which did not set the matter for further proceedings.<sup>24</sup>

On January 22, 2019, Alecia filed a "Notice of Joinder" and a "Motion for Child Support for a Disabled Child Beyond the Age of Majority."<sup>25</sup> This Motion was filed eight (8) months after Judge Ochoa issued the Decision and Order denying summary judgment. Although Alecia and/or Emily never filed a Complaint, the Court Ordered the matter would move forward.

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<sup>19</sup> Appendix at Volume III, Pages PET0405.

<sup>20</sup> Appendix at Volume III, Pages PET0406 through PET0423.

<sup>21</sup> Appendix at Volume III, Pages PET0424 through PET0436.

<sup>22</sup> Appendix at Volume III, Pages PET0437 through PET0447.

<sup>23</sup> Appendix at Volume III, Pages PET0446 through PET0447.

<sup>24</sup> Appendix at Volume III, Pages PET0448 through PET0463.

<sup>25</sup> Appendix at Volume III, Pages PET0464 and PET0465 through PET0478.

On December 4, 2019, Alecia provided a report from Dr. Love Farrell (“Dr. Love Farrell”).<sup>26</sup> The proposed report relied upon or included review of records that have never been provided to Jeff in this matter, and which were not produced with the proposed report. Dr. Love Farrell is allegedly Emily’s treatment provider and according to the proposed report, Dr. Love Farrell had not had contact with Emily since August 12, 2019.<sup>27</sup> Again, Jeff alleges that report was not complete and improper because the records had not been provided.

On January 10, 2020, the Court issued an Order Setting Evidentiary Hearing for April 16, 2020, and April 17, 2020.<sup>28</sup> Pursuant to that Order, discovery closed in this matter on April 3, 2020.<sup>29</sup>

On March 16, 2020, the Eighth Judicial District Court issued its first Administrative Order in relation to COVID-19.<sup>30</sup> Administrative Order 20-01 indicated that commencing on March 16, 2020, non-essential hearings would to be heard by video or telephonic means, decided on the papers or rescheduled by the District Court Judge.<sup>31</sup>

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<sup>26</sup> Appendix at Volume III, Pages PET0484 through PET0501.

<sup>27</sup> Appendix at Volume III, Pages PET0393 through PET0403.

<sup>28</sup> Appendix at Volume III, Pages PET0502 through PET0503

<sup>29</sup> Appendix at Volume III, Pages PET0503.

<sup>30</sup> Appendix at Volume III, Pages PET0504 through PET0507.

<sup>31</sup> Appendix at Volume III, Pages PET0505.

On March 20, 2020, Administrative Order 20-09 was issued which indicated all unexpired discovery deadlines shall be stayed for 30 days from the date of the Order.<sup>32</sup> It further indicated that a stay of all civil cases is being considered on a case-by-case basis.<sup>33</sup>

On March 25, 2020, Administrative Order 20-11 was issued, which provided that the stay on discovery previously issued in Administrative Order 20-09, applied to Family Court matters.<sup>34</sup> As it related to Trial, the Administrative Order stated, “Attorneys may have difficulty obtaining witnesses or being prepared for evidentiary proceeds in the period immediately following the duration of the administrative orders related to COVID-19. Judges are encouraged to liberally grant continues to allow time for preparation.”<sup>35</sup>

On April 2, 2020, after attempts to resolve ongoing discovery disputes, Alecia provided supplemental documents.<sup>36</sup> However, the supplemental documents from Alecia were not those records which were relied upon by Dr. Love Farrell. The records relied upon by Dr. Love Farrell were never received. At the same time, Jeff filed a Motion to Extend Discovery, Extend Time for

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<sup>32</sup> Appendix at Volume III, Pages PET0511.

<sup>33</sup> Appendix at Volume III, Pages PET0512.

<sup>34</sup> Appendix at Volume III, Pages PET0516.

<sup>35</sup> Appendix at Volume III, Pages PET0517 through PET0518.

<sup>36</sup> Appendix at Volume IV, Pages PET0538 through PET0735.



Disclosure of Rebuttal Expert, Compel Production of Medical Records, et. al.<sup>37</sup> On April 17, 2020, Alecia filed an Opposition.<sup>38</sup> That Motion was set before the Discovery Commissioner on May 8, 2020. Prior to the Motion being heard, the Discovery Commissioner issued a Minute Order on April 24, 2020, which vacated the hearing and indicated the matter would be forwarded to Judge Ritchie “for a determination on how to proceed.”<sup>39</sup>

On April 17, 2020, Administrative Order 20-13 was issued which stated that the prior thirty (30) day extension for deadlines is extended until this Order “expired, is modified or is rescinded by subsequent order.”<sup>40</sup> The Administrative Order went on to provide that related to Family Court that extension related to COVID-19 “constituting “good cause” and “excusable neglect” warranting the extension of time in non-essential civil-domestic case types.”<sup>41</sup> All discovery was tolled from March 18, 2020 until thirty (30) days from the expiration of that Administrative Order.<sup>42</sup>

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<sup>37</sup> Appendix at Volume III, Pages PET0520 through PET0537.

<sup>38</sup> Appendix at Volume IV, Pages PET0736 through PET0749.

<sup>39</sup> Appendix at Volume IV, Pages PET0750 through PET0751.

<sup>40</sup> Appendix at Volume IV, Pages PET0753.

<sup>41</sup> Appendix at Volume IV, Pages PET0756.

<sup>42</sup> Appendix at Volume IV, Pages PET0757.

On May 12, 2020, the Court issued an Order Setting Evidentiary Hearing which set the dates for August 6, 2020, and August 7, 2020.<sup>43</sup> The Court Order indicated no continuance would be granted unless the matter was heard at least three (3) days prior to the Evidentiary Hearing.<sup>44</sup>

On June 1, 2020, Administrative Order 20-17 was issued which provides continuance of any trial or evidentiary hearing will be considered on a case-by-case basis.<sup>45</sup> “Continuances should be granted to allow time for preparation or to obtain witnesses.<sup>46</sup> Judges will need to examine the merits of any application for a continuance, balancing the consequences of delay in the proceedings and the constraints placed on attorneys and litigations to prepare for a trial or evidentiary hearing.”<sup>47</sup> The Administrative Order goes on to indicated discovery continues to toll until July 1, 2020, which means that responses to discovery were not due until July 31, 2020.

On July 23, 2020, a Pre-Trial Conference was heard regarding the manner in which the Court would move forward- in person or via Blue Jeans. It was agreed that Counsel and clients would appear in person and certain witnesses could appear

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<sup>43</sup> Appendix at Volume IV, Pages PET0762 through PET0764.

<sup>44</sup> Appendix at Volume IV, Pages PET0763.

<sup>45</sup> Appendix at Volume V, Pages PET0775.

<sup>46</sup> Appendix at Volume V, Pages PET0775.

<sup>47</sup> Appendix at Volume V, Pages PET0775.

through Blue Jeans. Thereafter, on or about July 28, 2020, an internal memorandum was issued and the Court contacted Counsel and indicated that the matter would move forward via Blue Jeans unless the Parties wanted to agree to move the Trial date to appear in person. There was delay in getting a response from Alecia's Counsel on whether the Parties were in agreement to move the Trial date so they could appear in person; the delayed response was due to Alecia's Counsel having been out of the jurisdiction. Due to the delay in getting a response from Alecia's Counsel, Jeff was proactive and filed a Motion to Continue, pending him receiving a response from Alecia's Counsel.<sup>48</sup> Ultimately, Alecia's Counsel indicated a preference to move forward via Blue Jeans and Jeff's Counsel indicated a preference for an in-person Trial in this matter. The Court denied Jeff's Motion to Continue the Trial, et. al., indicating it was untimely.<sup>49</sup> Furthermore, as of the date of this filing, the Motion to Extend Discovery, Extend Time for Disclosure of Rebuttal Expert, Compel Production of Medical Records which had been forwarded from the Discovery Commissioner to Judge Ritchie via the April 20, 2020 Minute Order has not been ruled upon.

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<sup>48</sup> Appendix at Volume V, Pages PET0803 through PET0824.

<sup>49</sup> Appendix at Volume V, Pages PET0832.

## **II.**

### **STATEMENT OF THE ISSUES AND THE RELIEF SOUGHT**

The issues presented by this Petition for extraordinary relief are:

1. Whether the District Court may fail to rule on a timely filed Motion, even during the COVID-19 pandemic and in consideration of Administrative Orders, related to document production and extension of discovery deadlines;
2. Whether the District Court can deny a request to continue the Evidentiary Hearing despite there being outstanding issues regarding discovery even during the COVID-19 pandemic and in consideration of Administrative Orders; and
3. Whether the District Court can move forward, above the objection of one Party, with Trial via Blue Jeans when Alecia has indicated the intent to call a proposed expert witness and has proposed Exhibits which consist of 2,385 pages of documents including medical records.

The relief sought by this Petition for extraordinary relief is:

1. An Order directing extending discovery for a period to allow Jeff to obtain/retain an rebuttal expert;

2. An Order for Alecia to produce medical records relied upon by her expert in completion of her proposed expert report;
3. An Order permitting Jeff to retain a rebuttal expert upon obtaining relevant records; and
4. An Order instructing the District Court Judge to continue this matter.

### **III.**

#### **STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE**

Nevada Revised Statutes (“*NRS*”) § 34.160 provides that a writ of mandamus may issue “to compel the performance of an act[.]” *NRS* § 34.170 indicates that writ authority is permissible when there is “not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.”

Here, the District Court should be compelled to rule upon the Motion filed on April 2, 2020. Wherein, prior to the close of discovery, Jeff requested relief from the Court related to extension of discovery and outstanding medical records related to a proposed report from Alecia’s expert. Eighth Judicial District Court Rule (“*EDCR*”) § 2.35 permits the extension of discovery deadlines when good cause exists for same. Jeff alleges that Alecia is withholding relevant information in violation of Nevada Rules of Civil Procedure (“*NRC*P”) § 16.2, thereby prohibiting

the Jeff from being able to make arguments regarding Emily's alleged handicap including whether it occurred prior to her reaching the age of majority and continued for one (1) year. This violates Jeff's right to due process and impacts his ability to mount a defense to the claims alleged by Alecia.

District Courts have broad discretion in determining whether to admit evidence. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 492, 117 P.3d 219, 226 (2005). The purpose of discovery is to take the "surprise out of trials of cases so that all relevant facts and information pertaining to the action may be ascertained in advance of trial." *Washoe Cnty. Ed. of Sch. Trustees v. Pirhala*, 84 Nev. 1, 5, 435 P.2d 756, 758 (1968). In this matter, Jeff should be allowed to review the records relied upon by Alecia's proposed expert and to fail to do so would render her testimony moot. Moreover, Jeff has not been provided with the documents in question which constitutes a *de facto* surprise as to him regarding the content.

*NRCP* § 16.2 provides some guidance regarding witness disclosures and reports; however, *NRCP* § 16.2 is not as specific as *NRCP* § 16.1. Therefore, by analogy the Court should look to *NRCP* § 16.1 (a)(2)(B) which provides that the report must contain, again this is mandatory and not discretionary,

- (i) a complete statement of all opinions the witness will express, and the basis and reasons for them;

- (ii) the facts or data considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous ten years;
- (v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

On October 22, 2019, Alecia provided a resume of Jennifer Love Farrell, MD, FASAM. The disclosure failed to identify testimony given by the purported expert and fee compensation. Additionally, Jeff alleges that the report provided was defective. Jeff was unable to secure an expert or discuss rebuttal testimony until the report was provided. The supplemental report was provided on December 4, 2019, but again failed to provide all of the records relied upon including those of Jennifer Love Farrell, MD, FASAM. Rather, she indicates in the report that she will provide it upon direction from the Court and that the records should be confidential. Therefore, Jeff has been limited in discussing rebuttal testimony without all evidence being provided.

*NRCP* § 16.2 (e)(3)(B) is much more generic and provides, "The report must contain a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information considered by the witness in

forming the opinions, any exhibits to be used as a summary of or support for the opinions, and the qualifications of the witness.” The records relied upon are supposed to be provided and they have not been in this matter. In fact, it has been ruled that this is mandatory and not discretionary. *FCHI, LLC, v. Rodriguez*, 335 P.3d 183, 189 (2014). The Supreme Court has indicated that failure to provide the entire body of medical records when an expert had the ability to review them to formulate their opinion would render the experts opinion inadmissible. *Id.* As such, in order for the rebuttal expert to complete her assessment, she must be given all the information. To this end, additional time should be given to allow this to occur.

Furthermore, *NRCP* § 16.2 (e)(3)(B) provides, “The court, upon good cause shown or by stipulation of the parties, may extend the deadline for exchange of the expert reports or relieve a party of the duty to prepare a written report in an appropriate case.” Here, Defendant acknowledges that the report is late; however, there is no prejudice to the Plaintiff because if the records are provided immediately then the Trial will continue as scheduled.

Moreover, Jeff alleges that due to the issues regarding COVID-19 pandemic, Administrative Orders were issued which allowed and encouraged continuation of matters impacted by the pandemic. Here, Jeff alleges that the specific issues



addressed in the Administrative Order are impacting his ability to have a full and fair Trial in this matter. Again, he attempted to obtain relevant information prior to the commencement of Trial and in accordance with Court rules; however, there was a failure to even consider Jeff's requests herein. *EDCR* § 7.30 provides that "any party may, for good cause, move the court for an order continuing the day set for trial of any cause." Good cause exists when it can be established that a continuance will make a difference in the case. *Lee v. Kemna*, 534 U.S. 362, 122 S. Ct. 877 (2002). In this matter, good cause exists to continue the Trial because there are documents which have not been produced and are necessary for the issues in this matter including retention of a rebuttal expert.

Therefore, the District Court should be mandated to enter an Order requiring Alecia to provide the records relied upon by her proposed expert, and Jeff should be given ample time after production of those records to secure a rebuttal expert.

Additionally, *NRS* § 34.320 prohibits this Court from issuing a writ of prohibition which "arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." Here, Jeff would argue that the Court should be prohibited from moving forward with Trial on August 6, 2020, and August 7, 2020, until the District Court complied

with the mandate regarding discovery in this matter. The District Court has failed to take into consideration the impact and fairness that having a Trial will have without the sufficient information requested and rebuttal expert, and the impact moving forward with Blue Jeans will have when the alleged exhibits proposed by Alecia are in excess of 2,000 pages of medical records.

This Court has original jurisdiction over the extraordinary remedies of writs of mandamus, prohibition, and certiorari.<sup>50</sup> The Court has exclusive jurisdiction to issue a writ of prohibition and mandamus to compel a District Court to perform a required act,<sup>51</sup> or to refrain from performing a prohibited act, such as one beyond its subject matter jurisdiction. A writ of prohibition is appropriate when the respondent is presently acting in excess of its jurisdiction.<sup>52</sup> A writ is an extraordinary remedy that will not issue if the Petitioner has a plain, speedy, and adequate remedy at law.<sup>53</sup> Whether to consider a writ is in the discretion of this Court.<sup>54</sup>

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<sup>50</sup> Nev. Const. Art. 6 SS 4, 6.

<sup>51</sup> NRS § 34.160.

<sup>52</sup> *Gaming Control Bd. v. Breen*, 99 Nev. 320, 661 P. 2d 1309 (1983); *Gray Line Tours v. Dist. Ct.*, 99 Nev. 124, 659 P. 2d 304 (1983).

<sup>53</sup> *Leibowitz v. District Court*, 119 Nev. 523, 78 P.3d 515 (2003).

<sup>54</sup> *Id.* at 519.

**IV.**  
**CONCLUSION**

Jeff should not have to take the risk that an oral Motion on the day of Trial would be granted by the District Court precluding Alecia's expert from testifying in this matter. Here, Jeff request the following relief be granted:

1. An Order directing extending discovery for a period to allow Jeff to obtain/retain an rebuttal expert;
2. An Order for Alecia to produce medical records relied upon by her expert in completion of her proposed expert report;
3. An Order permitting Jeff to retain a rebuttal expert upon obtaining relevant records; and
4. An Order instructing the District Court Judge to continue this matter.

DATED this 4<sup>th</sup> day of August, 2020.

**ROBERTS STOFFEL FAMILY LAW GROUP**

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## **CERTIFICATE OF SERVICE**

I hereby certify on this 4<sup>th</sup> day of August, 2020, service of the Writ Of Mandamus Or, In The Alternative, Writ Of Prohibition was made personal to NRCP 5(b) and electronically submitted using the CM/ECF system form filing and transmittal to the following:

Elizabeth Brennan Esq.  
Email: Elizabeth@brennanlawfirm.com  
Attorney for Plaintiff, Alecia Draper,  
In her Capacity as Conservator for Emily Reed

Benjamin La Luzerne, Esq  
Email: Ben.laluzerne@laluzernelaw.com  
Attorney for Plaintiff, Alecia Ann Draper, Individually

I hereby certify on this 4<sup>th</sup> day of August, 2020, service of the Writ Of Mandamus Or, In The Alternative, Writ Of Prohibition was made by placing same in the U.S. Mail, addressed as follows:

Honorable Judge T. Arthur Ritchie, Jr.  
200 Lewis Ave., Third Floor  
Las Vegas, Nevada, 89155

And a courtesy copy was sent via email to the following:

rford@clarkcountycourt.us and krausch@clarkcountycourts.us

By:   
Employee of Roberts Stoffel Family Law Group