

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD JERNEE, INDIVIDUALLY
AND AS NATURAL FATHER AND
HEIR OF ADAM JERNEE; PILAR
JERNEE, INDIVIDUALLY AND AS
NATURAL MOTHER AND HEIR OF
ADAM JERNEE; TONNIE SAVAGE AS
SPECIAL ADMINISTRATOR OF AND
AS REPRESENTATIVE OF THE
ESTATE OF ADAM JERNEE,
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
STEVEN P. ELLIOTT, DISTRICT
JUDGE,

Respondents,

and

KINDER MORGAN ENERGY
PARTNERS, A MASTER LIMITED
PARTNERSHIP; ENRON LIQUIDS
PIPELINE, L.P.; OPERATING
PARTNER SFPP, L.P., (FORMERLY
SANTA FE PACIFIC PIPELINES, INC);
KMGP SERVICES COMPANY, INC.;
KINDER MORGAN GP, INC.; KINDER
MORGAN SERVICES, LLC, A LIMITED
LIABILITY COMPANY; KINDER
MORGAN LAS VEGAS, LLC; KINDER
MORGAN OPERATING LIMITED
PARTNERSHIP "D"; AND OTHER
KINDER MORGAN BUSINESS
ENTITIES AND BUSINESS ENTITIES
FORMED BY AND ASSOCIATED WITH
AND/OR DOING BUSINESS WITH
AND/OR AS KINDER MORGAN "D";
RICHARD D. KINDER; WILLIAM V.

No. 42990

FILED

JUN 08 2004

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

MORGAN; SANTA FE PACIFIC PIPELINE PARTNERS, L.P.; SANTA FE PACIFIC LIMITED PARTNERSHIP; SANTA FE PACIFIC PIPELINES, INC.; SOUTHERN PACIFIC PIPE LINES U.S.A., PARTNERSHIP; SFPP, LIMITED PARTNERSHIP; SFPP, L.P.; KINDER MORGAN; SOUTHERN PACIFIC TRANSPORTATION COMPANY; SOUTHERN PACIFIC RAIL CORPORATION; KINDER MORGAN L.P. "D," GENERAL PARTNER OF KMP OR KMPE; KINDER MORGAN, INC. (KMI); CALNEV PIPELINE LLC; INTERENERGY RESOURCES CORP.; SOUTHERN PACIFIC TRANSPORTATION COMPANY; SOUTHERN PACIFIC RAIL CORPORATION; CITY OF FALLON, A POLITICAL SUBDIVISION IN CHURCHILL COUNTY IN THE STATE OF NEVADA; UNION PACIFIC RAILROAD COMPANY, (FORMERLY SOUTHERN PACIFIC TRANSPORTATION COMPANY) AND SOUTHERN PACIFIC TRANSPORTATION COMPANY; KENNAMETAL, INC.; SANTA FE PACIFIC PIPELINES, INC.; LANDOWNER OF 1755 AUCTION ROAD (APT. 203); LANDOWNERS AND OPERATORS OF OTHER REAL PROPERTY WHERE REMEDIATION OF PETROLEUM EXISTS OR IS TAKING PLACE IN FALLON, NEVADA AND/OR CHURCHILL COUNTY; COOPER AND SONS ELY; BRIAN COOPER; SHANE COOPER; FATHER OF BRIAN AND SHANE COOPER, INDIVIDUALLY AND AS A BUSINESS; AND TRUCKEE CARSON IRRIGATION

DISTRICT (TCID),
Real Parties in Interest.

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus and writ of prohibition challenges a district court's refusal to enter a stay pursuant to NRAP 3A(b)(4) and the district court's issuance of several orders after both petitioners and real party in interest City of Fallon requested a stay.

On October 2, 2003, the City requested a change of venue in the underlying case, which Judge Elliott denied on January 28, 2004. On February 26, 2004, the City appealed to this court from the district court's order denying its change of venue motion. The City's appeal is currently pending as Docket Number 42889 and has been assigned to the settlement program. On the same day it filed its appeal, the City requested that the district court stay the lower court proceedings pursuant to NRAP 3A(b)(4). Petitioners similarly requested a stay under NRAP 3A(b)(4) on that same day.

On March 29, 2004, we granted petitioners' request for a temporary stay of the district court proceedings and directed respondent Judge Elliott to file an answer to the petition. The time allotted for filing an answer has expired, and this court has received no response.

NRAP 3A(b)(4) states, with emphasis added, that:

. . . on demand or motion of either party to an action or proceeding the court or judge making the order changing or refusing to change the place of trial of an action or proceeding shall make an order staying the trial of the action or proceeding until the time to appeal from such order, changing or refusing to change the place of trial, shall have lapsed; or if an appeal from such order is taken,

until such appeal shall, in the appellate court, or in some other manner, be legally determined.

NRAP 3A(b)(4) gives the parties thirty days to appeal from an order granting or denying a change of venue motion. In this case, the City filed its appeal within that thirty-day window, and both the City and petitioners subsequently requested that the district court enter a stay of the proceedings as required by NRAP 3A(b)(4). The district court refused to grant the stay and subsequently entered several orders, including an order dismissing the City from the underlying case.

A writ of mandamus is available to compel the performance of an act required by law as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion.¹ A writ of mandamus will not issue, however, if the petitioner has a plain, speedy and adequate remedy in the ordinary course of law.²

The language of NRAP 3A(b)(4) indicates that the district court was required to stay any further proceedings. The use of the word “shall” eliminates the district court’s discretion and makes the entry of the stay mandatory and automatic. Consequently, the district court was required to stay all district court proceedings once the City appealed and a request for a stay was made.

The district court had a duty to enter the requested stay. Additionally, it appears that petitioner has no plain, speedy and adequate remedy in the ordinary course of law. We therefore grant this petition. The clerk of this court shall issue a writ of mandamus compelling the


¹NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


²NRS 34.170.

respondent district court to vacate all orders and actions taken after the stay was requested on February 26, 2004, and to grant the request and stay all proceedings in Case No. CV0303482 until the appeal pending in Docket Number 42889 is resolved.

It is so ORDERED.³


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Steven P. Elliott, District Judge
Calvin R.X. Dunlap
Babst, Calland, Clements and Zomnir, P.C.
Orest B. Dachinwsky
Erickson Thorpe & Swainston, Ltd.
Gordon & Rees, LLP
Hale Lane Peek Dennison & Howard/Reno
Jenkins & Carter
Lorber, Greenfield, Polito & Pengilly, LLP
Morgan Lewis & Bockius
Walther Key Maupin Oats Cox & LeGoy
Washoe District Court Clerk

³In light of this order, we vacate the temporary stay entered on March 29, 2004. Additionally, we deny as moot real party in interest Kennametal Inc.'s motion to dissolve or modify the temporary stay.