

IN THE SUPREME COURT OF THE STATE OF NEVADA

MDM TRUST AND TERRY MOSLEY,
TRUSTEE OF THE MDM TRUST; AND
TERRY MOSLEY, AN INDIVIDUAL,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JESSIE WALSH, DISTRICT JUDGE,

Respondents,

and

EDYTH E. FITZPATRICK,

Real Party in
Interest.

No. 43794

FILED

AUG 18 2004

JANETTE B. BULLOCK
CLERK OF SUPREME COURT
BY *J. Ruback*
DEPUTY CLERK


ORDER DENYING PETITION FOR WRIT OF
CERTIORARI AND MANDAMUS

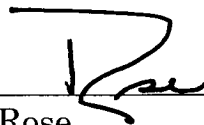
This petition for a writ of certiorari and mandamus, filed on August 17, 2004, challenges a district order denying petitioners' motion for summary judgment, denying without prejudice real party in interest's request for a writ of restitution, and setting a "trial" date of August 11, 2004.


Petitioners request this court to "direct the District Court via mandamus or certiorari to allow the parties sufficient time to conduct discovery before trying this case and the opportunity to have this case heard before a jury." Petitioners represent that they will be "irreparably injured" if "forced to proceed to trial without the benefit of a jury or appropriate discovery." Finally, petitioners represent that although proceedings were not held on August 11, 2004, as indicated in the district court's order, the "case is set to be tried . . . on August 18, 2004."

From our review of the district court record, including the official district court minutes and the limited transcripts included as exhibits to the petition, it appears the district court has scheduled only an 'Evidentiary Hearing' for August 18, 2004. Thus, it does not appear that the district court intends to conduct a full trial on the merits of this case, and therefore petitioners' due process rights and right to a jury trial are not implicated at this time. Accordingly, we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time, and we deny the petition. See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). In light of this disposition, we deny as moot petitioners' motion for a temporary stay of the proceedings in the district court.

It is so ORDERED:


_____, J.
Becker


_____, J.
Rose


_____, J.
Douglas

cc: Hon. Jessie Elizabeth Walsh, District Judge
Callister & Reynolds
David J. Winterton & Associates, Ltd.
Clark County Clerk