

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK DESTEFANO,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE LEE
A. GATES, DISTRICT JUDGE,

Respondents,


and

MATTHEW BERKUS; JIM GERMAIN;
AND JAMES LEAVITT,
Real Parties in Interest.

No. 43851

FILED

SEP 03 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT
OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order that denied a motion to dismiss a declaratory judgment action in an election dispute.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,¹ or to control an arbitrary or capricious exercise of discretion.² A writ of prohibition may be issued to compel government bodies or officials

¹See NRS 34.160.

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

to cease performing acts beyond their legal authority.³ A writ shall issue only “where there is not a plain, speedy and adequate remedy in the ordinary course of law.”⁴ Generally, this court will not exercise its discretion to consider writ petitions that challenge district court orders that deny motions to dismiss, unless pursuant to clear authority under a statute or rule, the district court is obligated to dismiss the action, or an important issue of law requires clarification.⁵ An appeal is generally an adequate remedy that precludes writ relief.⁶

We have considered this petition, and are not satisfied that our intervention by way of extraordinary relief is warranted. If petitioner is aggrieved by the district court’s final judgment in the underlying declaratory judgment action, it appears that petitioner can raise the issues presented in this writ petition on appeal.⁷ Petitioner’s right to appeal is

³NRS 34.320; Ashokan v. State, Dep’t of Ins., 109 Nev. 662, 856 P.2d 244 (1993).

⁴NRS 34.170; NRS 34.330.

⁵Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).


⁶Dayside Inc. v. Dist. Ct., 119 Nev. 404, 75 P.3d 384 (2003).


⁷See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 971 P.2d 1251 (1998) (stating that interlocutory orders may be challenged on appeal from final judgment).


an adequate remedy that precludes writ relief. Accordingly, we deny this petition.⁸

It is so ORDERED.⁹


 C.J.
Shearing


 J.
Agosti

 J.
Rose

 J.
Becker

 J.
Maupin

 J.
Gibbons

 J.
Douglas

cc: Lee A. Gates, District Judge
Harold P. Gewerter
Cremen Law Offices
Clark County Clerk

⁸NRAP 21(b).

⁹In light of the trial scheduled for September 7, 2004, we grant petitioner's motion to expedite consideration of this writ petition.