

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
JACK WILLIAM (JOHN) ACHTTIEN,

NANCY ACHTTIEN CLAPP,
Petitioner,

vs.

THE NINTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF DOUGLAS, AND THE
HONORABLE ROBERT E. ESTES,
DISTRICT JUDGE,

Respondents,

and

BLAKE N. HICKOK,
Real Party in Interest.

No. 44022

FILED

NOV 15 2004

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

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This is an original proper person petition for a writ of mandamus or prohibition seeking to vacate a writ of attachment issued by the district court to collect \$814.07 for payment of attorney fees, interest and costs.

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 On the other hand, a writ of prohibition is the proper remedy to restrain a district court from exercising a judicial function without or in excess of its

¹See NRS 34.160.

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

jurisdiction.³ In either case, the issuance of a writ is an extraordinary remedy, and whether a petition will be entertained is entirely within the discretion of this court.⁴

We have considered this petition, and we are not satisfied that our intervention by way of extraordinary relief is warranted at this time. Accordingly, we deny the petition.⁵

It is so ORDERED.⁶

Becker

Becker, J.

Becker

Agosti, J.

Gibbons, J.

Gibbons

³NRS 34.320; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁴Smith, 107 Nev. 674, 818 P.2d 849; Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

⁵NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

⁶Although petitioner was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from her.

Petitioner has not paid the filing fee required by NRS 2.250, but has filed a letter requesting leave to proceed in forma pauperis. We take judicial notice of the fact that appellant paid the filing fee in an earlier appeal in Docket No. 40107, she posted a \$250 cost bond in Docket No. 40623, and this court denied her motion to proceed in forma pauperis in Docket No. 40623. Accordingly, we deny petitioner's current request to proceed in forma pauperis. Thus, petitioner's failure to pay the filing fee constitutes an independent basis for denying this petition.

Finally, the petitioner's request for return of her cost bond is a matter properly addressed by the district court in which the bond has been posted.

cc: Hon. Robert E. Estes, District Judge
Nancy Achttien Clapp
Brooke Shaw Zumpft
Douglas County Clerk