

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE OEHLSEN, D.O., AND
UNIVERSITY MEDICAL CENTER,
Petitioners,

vs.

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

Respondents,

and

DENNIS NESLUND,
Real Party in Interest.

No. 45170

FILED

MAY 19 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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 ruling related to the statutory damages cap under NRS 41.035(1).

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

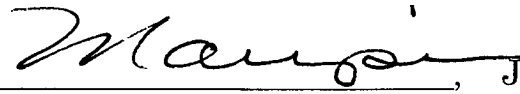
¹See NRS 34.160.

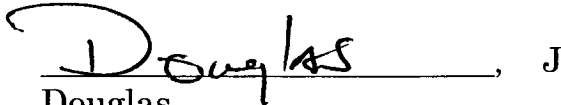
²See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

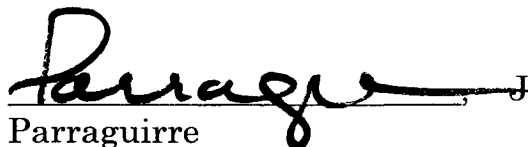
to cease performing acts beyond their legal authority.³ A writ shall issue only “where there is not a plain, speedy and adequate remedy in the ordinary course of law.”⁴

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

It is so ORDERED.


Maupin


Douglas


Parraguirre

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

⁴NRS 34.170; NRS 34.330.

⁵It appears that if petitioners are aggrieved by the district court’s final judgment in this action, petitioners can raise the issues presented in this writ petition on appeal. Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 971 P.2d 1251 (1998) (stating that interlocutory orders may be challenged on appeal from any final judgment). Alternatively, like the plaintiffs in County of Clark v. Upchurch, 114 Nev. 749, 961 P.2d 754 (1998), it appears that an action for a declaratory judgment is available to petitioners to determine their rights and liabilities under NRS 41.035(1). See NRS chapter 30.

cc: Hon. Jackie Glass, District Judge
Mandelbaum & Schwarz, Ltd.
Albert D. Massi, Ltd.
Clark County Clerk