

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL SIMS, D.D.S.,
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

VALERIE TSOHANTARIDIS, M.ED.,
LMHC; GREGORY E. SKIPPER, M.D.;
ALYSA HILTON, M.D.; AND ANNE E.
LINTON, M.D.,

Real Parties in Interest.

No. 45223

FILED

JUN 30 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 the district court's oral order that the real parties in interest be dismissed from the underlying case.

Petitioner filed the instant petition challenging the district court's oral order on May 11, 2005. On May 9, 2005, a written order memorializing the district court's oral pronouncement was filed. The May 9 order contained a certification that the order was a final judgment pursuant to NRCP 54(b) and, on June 17, 2005, petitioner filed a notice of appeal from the May 9 order in the Eighth Judicial District Court. Petitioner's appeal is currently pending in this court in Docket No. 45472.

A writ of mandamus is available only when there is not a plain, speedy and adequate remedy in the ordinary course of law.¹ Similarly, a writ of prohibition is also available only when there is not a plain, speedy and adequate remedy in the ordinary course of law.² This court has held that “the right to appeal is generally an adequate legal remedy that precludes writ relief.”³ Here, not only does petitioner have the right to appeal, he has already exercised that right. Accordingly, this court’s intervention by way of extraordinary relief is not warranted, and we

ORDER the petition DENIED.⁴

Becker, C.J.
Becker

Rose, J.
Rose

Hardesty, J.
Hardesty

¹NRS 34.170.

²NRS 34.330.

³Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

⁴See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). Although petitioner has not filed a formal motion for a stay, he has asked that this court stay the underlying proceedings pending its consideration of this petition as part of the relief sought in the petition. In light of this order we deny as moot petitioner’s request for a stay.

cc: Hon. Lee A. Gates, District Judge
Patti & Sgro, P.C.
Asberom & Brown
Hoffman, Hart & Wagner
Pearson, Foley & Kurtz, P.C.
Clark County Clerk