

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHIRLEY COLLETTI-  
MILTENBERGER, INDIVIDUALLY  
AND AS TRUSTEE OF THE JIMMIE  
MILTENBERGER AND SHIRLEY J.  
MILTENBERGER REVOCABLE  
LIVING TRUST AGREEMENT DATED  
OCTOBER 26, 2000,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
STEVEN E. JONES, DISTRICT JUDGE,  
FAMILY COURT DIVISION,  
Respondents,

and

JIMMIE MILTENBERGER,  
INDIVIDUALLY AND AS TRUSTEE OF  
THE JIMMIE MILTENBERGER AND  
SHIRLEY J. MILTENBERGER  
REVOCABLE LIVING TRUST  
AGREEMENT DATED OCTOBER 26,  
2000; AND THE JIMMIE  
MILTENBERGER AND SHIRLEY J.  
MILTENBERGER REVOCABLE  
LIVING TRUST AGREEMENT DATED  
OCTOBER 26, 2000,  
Real Parties in Interest.

No. 45513

**FILED**

JUL 06 2005

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR  
PROHIBITION

This is an original petition for a writ of mandamus or prohibition challenging a district court's ruling regarding the possession of the marital residence.

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,<sup>1</sup> or to control an arbitrary or capricious exercise of discretion.<sup>2</sup> 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 jurisdiction.<sup>3</sup> In either case, the writs may be issued only when "there is not a plain, speedy and adequate remedy in the ordinary course of law."<sup>4</sup> The issuance of either writ "is purely discretionary" with this court.<sup>5</sup>

We have considered this petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. In particular, it does not appear that the district court has entered a written order. We have recognized that "dispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy, must be written, signed, and filed

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<sup>1</sup>NRS 34.160.

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

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

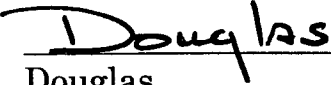
<sup>4</sup>NRS 34.170; NRS 34.330; see also Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004) (recognizing that an appeal is an adequate legal remedy).

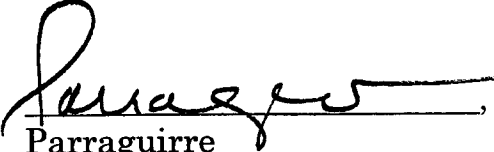
<sup>5</sup>Smith, 107 Nev. at 677, 818 P.2d at 851.

before they become effective.”<sup>6</sup> Accordingly, as petitioner has not supplied this court with any written order on which relief could be based, we deny the petition.<sup>7</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Steven E. Jones, District Judge, Family Court Division  
Piazza & Associates  
Sean K. Claggett  
Graziadei & Cantor, Ltd.  
Clark County Clerk

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<sup>6</sup>State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004)

<sup>7</sup>See NRAP 21(b); Pan, 120 Nev. 222, 88 P.3d 840 (observing that a petitioner has the burden of supplying documentation and demonstrating that extraordinary relief is warranted). We deny as moot petitioner’s request for a stay.