

IN THE SUPREME COURT OF THE STATE OF NEVADA

CYNTHIA DAVIDSON,  
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE, AND THE HONORABLE  
CHUCK WELLER, DISTRICT JUDGE,

Respondents,

and

JOSEPH DAVIDSON,  
Real Party in Interest.

No. 45701

**FILED**

SEP 08 2006

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 an August 3, 2005 district court order that directed funds to be deposited with the district court clerk and then released to the real party in interest.

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> A writ of prohibition arrests the proceedings of any tribunal exercising judicial functions, when such proceedings are without or in excess of its

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<sup>1</sup>NRS 34.160.


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

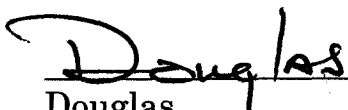
jurisdiction.<sup>3</sup> Further, mandamus and prohibition are extraordinary remedies, and it is within the discretion of this court to determine if a petition will be considered.<sup>4</sup>

We have reviewed the petition and accompanying documents, and we conclude that our intervention by way of extraordinary relief is not warranted. In particular, contrary to petitioner's contention, the district court had jurisdiction to enter an order, after the appeal was filed, that enforced the May 31, 2005 order concerning the distribution of the proceeds from the sale of the marital residence. Both the district court and this court declined to enter a stay pending the appeal's resolution and, thus, the district court was simply enforcing its prior order. Accordingly, we deny this petition. Additionally, we deny petitioner's request for attorney fees and costs.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Gibbons

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

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

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<sup>3</sup>NRS 34.320.

<sup>4</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

cc: Hon. Chuck Weller, District Judge, Family Court Division  
Law Offices of Roderic A. Carucci  
Joseph Davidson  
Washoe District Court Clerk