

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALICE A. MOLASKY-ARMAN; BEN
GILLARD; MERI JANE STERN; AND
STATE OF NEVADA, DIVISION OF
INSURANCE,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
VALORIE J. VEGA, DISTRICT JUDGE,
Respondents,

and

ALL STAR BAIL BONDS, INC.;
ANGELA MAYFIELD; GEORGE
GARCIA; JAMES L. LYON; A BAIL
BONDS, INC.; AND SEAYNOAH
MAYFIELD,
Real Parties in Interest.

No. 45816

FILED

DEC 27 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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 refusal to dismiss claims filed against certain Nevada Department of Business and Industry's Division of Insurance (the Division) officers or employees, including petitioner Division Commissioner Alice A. Molasky-Arman. The Division, its Chief Investigator, Ben Gillard, and its Investigator, Meri Jane Stern, have joined the petition. On October 12, 2005, real parties in interest timely filed an answer to the petition, as directed.

Whether to consider petitions for the extraordinary remedy of writ relief is within this court's sound discretion.¹ When factual, rather than legal, issues are presented, this court will not exercise its discretion to consider an original extraordinary writ petition.² As a result, this court generally will not exercise its discretion to consider writ petitions that challenge district court orders denying motions to dismiss or for summary judgment, unless dismissal is clearly required by a statute or rule, or an important issue of law requires clarification.³ Instead, an appeal is usually an adequate legal remedy that will preclude extraordinary writ relief.⁴

We have considered this petition and answer, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted. In particular, with regard to the immunity and res judicata issues raised by petitioners, we are unable to conclude that dismissal is

¹State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146, 42 P.3d 233, 237 (2002).

²Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981).

³Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997); see also Conklin Ex Rel. v. Buckingham, 58 Nev. 450, 453, 83 P.2d 462, 463 (1938) (recognizing that a writ of mandamus will issue only when a clear legal right to the requested relief is shown).

⁴See Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004) (noting that (1) petitioners carry the burdens of demonstrating that extraordinary relief is warranted and of complying with NRAP 21(a)'s direction to provide all documents necessary to this court's review of the matter and (2) an appeal is generally an adequate legal remedy that precludes writ relief).

clearly mandated by statute or rule.⁵ Further, while this petition might raise legal issues that require clarification, we conclude that our consideration and resolution of those issues would be greatly benefited by a completely developed trial court record. Accordingly, as petitioners, should they be aggrieved by the district court's final adjudication of the underlying matter, have an adequate legal remedy by way of appeal, we deny the petition.⁶

It is so ORDERED.⁷

Becker, C. J.
Becker

Douglas, J.
Douglas

Rose, J.
Rose

⁵With regard to the NRCP 41(e) issue raised by petitioners, it does not appear that the district court has abused its discretion or lacks jurisdiction over the underlying matter, and thus writ relief is inappropriate in this instance. See NRS 34.160; NRS 34.320. We emphasize, however, that if the matter does not proceed on the court's stack as currently scheduled, nothing in this order shall preclude petitioners from moving to dismiss pursuant to NRCP 41(e).

⁶See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁷We have considered petitioner Molaksy-Arman's motion for permission to file a reply. Because we conclude that, in light of the concerns noted above, a reply would not be helpful to our analysis, we deny her request. Real parties in interest's November 8, 2005 countermotion to strike, or alternatively for leave to file a responsive brief and for oral argument, as well as Molaksy-Arman's November 8, 2005 motion to strike, are denied as moot. We vacate the stay entered by this court on September 8, 2005.

cc: Hon. Valorie Vega, District Judge
Attorney General George Chanos/Carson City
Attorney General George Chanos/Las Vegas
Callister & Reynolds
Gentile DePalma, Ltd.
Hunterton & Associates
S. Shane Mayfield
Clark County Clerk