

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS RUSK,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
NANCY M. SAITTA, DISTRICT JUDGE,

Respondents,

and

ENVIRONMENT FOR LIVING, A  
NEVADA CORPORATION,  
Real Party in Interest.

No. 46173

FILED

NOV 17 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 minute order that granted the real party in interest's motion for reconsideration or motion for relief from judgment pursuant to NRCP 60(b). Because no formal written order memorializing the minute order has been entered, it is not clear exactly what the minute order purports to achieve.<sup>1</sup> Petitioner, however, contends that the effect of the district court's minute order was to nullify the judgment entered in his favor.

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<sup>1</sup>We note that the fact that no formal written order has been entered in the underlying case could constitute an independent basis for the denial of this petition. See Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (noting that "[t]he district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose").

If petitioner's contention is correct, then once a formal written order is entered, petitioner may appeal from that order as a special order made after final judgment pursuant to NRAP 3A(b)(2). This court has held that, for a special order made after final judgment to be appealable under NRAP 3A(b)(2), it "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered. It must be an order affecting rights incorporated in the judgment."<sup>2</sup> Thus, if the district court's written order either grants the real party in interest's request for NRCP 60(b) relief or grants its request for reconsideration and affects the rights set forth in the judgment, the written order will be appealable as a special order after final judgment.<sup>3</sup>

Writs of mandamus and prohibition are available only where no plain, speedy, and adequate remedy exists in the ordinary course of law.<sup>4</sup> This court has repeatedly held that an appeal is a speedy and adequate remedy that precludes the availability of writ relief.<sup>5</sup> As petitioner may appeal from a written district court order resolving an NRCP 60(b) motion or from any special order after final judgment, we

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<sup>2</sup>Gumm v. Mainor, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).

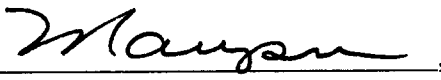
<sup>3</sup>See Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987) (allowing an appeal from an order denying a motion to set aside a judgment under NRCP 60(b)); Bates v. Nevada Savings & Loan Ass'n, 85 Nev. 441, 456 P.2d 450 (1969) (concluding that an order granting a motion for rehearing is appealable as a special order after final judgment). See also Rust, 103 Nev. at 689, 747 P.2d at 1382 (noting that only a written order or judgment has any effect and thus, only a written judgment or order may be appealed).

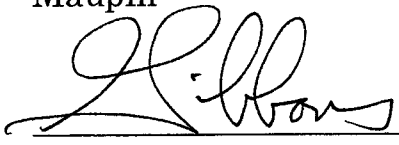
<sup>4</sup>NRS 34.170; NRS 34.330.

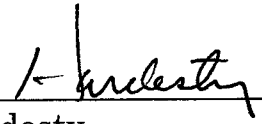
<sup>5</sup>Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

conclude that petitioner has a plain, speedy, and adequate remedy available in the form of an appeal, and thus this court's intervention by way of extraordinary relief is not appropriate.<sup>6</sup> We therefore deny the petition.<sup>7</sup>

It is so ORDERED.

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

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

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Nancy M. Saitta, District Judge  
Lefebvre & Associates, Chtd.  
Richard A. Avila  
Clark County Clerk

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<sup>6</sup>NRS 34.170; NRS 34.330; Pan, 120 Nev. at 224, 88 P.3d at 841.

<sup>7</sup>See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).