

IN THE SUPREME COURT OF THE STATE OF NEVADA

EWING BROS., INC., A NEVADA
CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,

and

RICHARD A. HAMMOND AND
ALLSTATE INSURANCE COMPANY,
Real Parties in Interest.

No. 46264

FILED

SEP 08 2006

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

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

This original petition for a writ of certiorari challenges a district court affirmance of a justice's court decision. Real parties in interest have timely filed an answer.

In the underlying justice's court negligence matter, a jury returned a verdict apportioning to petitioner 85 percent of the fault in an automobile accident. Five days later, real parties in interest moved the justice's court to enter judgment against petitioner and for an award of attorney fees and costs. The justice's court entered judgment, including an award of costs and attorney fees, against petitioner. Petitioner appealed the judgment to the district court. The district court affirmed the judgment, and this petition for a writ of certiorari followed.

A writ of certiorari is available to cure jurisdictional excesses when there is no plain, speedy, and adequate legal remedy.¹ Petitioner limits its arguments to the justice's court's award, and the district court's affirmance, of costs to real parties in interest. According to petitioner, the justice's court lacked jurisdiction to "tax [p]etitioner for costs based on a cost bill that was both served and filed beyond the two day requirement of NRS 69.040." In essence, petitioner apparently contends that, because real parties in interest moved for an award of costs more than two days after the jury entered its verdict, the motion was untimely and that, as a result, the justice's court was without jurisdiction to grant the motion. This argument is unpersuasive.


NRS 69.040(2), pertinently, provides that "[t]he party in whose favor judgment is rendered" must move for costs "within [two] days after the verdict or notice of the decision of the justice or such further time as may be granted." Here, although real parties in interest moved for costs more than two days after the jury entered its verdict, the justice's court had not yet entered the ensuing judgment in real parties in interest's favor. Indeed, the justice's court did not enter its judgment based on the jury's verdict until approximately four months after real parties in interest filed their motion for judgment and costs. Thus, because real parties in interest moved for costs before judgment had been entered in their favor, the motion was not untimely and neither the justice's court nor district court exceeded its jurisdiction.

¹NRS 34.020(2).

Moreover, because NRS 69.040(2) allows a prevailing party to move for costs within "such . . . time as may be granted" by the justice's court, even if the time for filing for a costs award began to run when the jury verdict was entered, under the statute, the justice's court retained authority to consider and grant the award. Our intervention by way of extraordinary relief is thus not warranted.

Accordingly, we deny the petition.

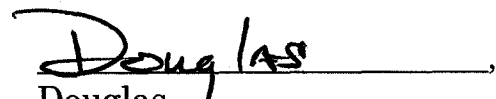
It is so ORDERED.



Gibbons J.



Maupin J.



Douglas J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
H. Bruce Cox
Mills & Associates
Clark County Clerk