

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT MOLINA, INDIVIDUALLY;
AND MIRACLE METHOD,
INDIVIDUALLY,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JESSIE WALSH, DISTRICT JUDGE,
Respondents,
and
ESMERALDA VILLALOBOS,
Real Party in Interest.

No. 46728

FILED

MAR 13 2006

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying a motion for summary judgment in a personal injury action resulting from an automobile accident.

A writ of mandamus is available to compel the performance of an act that the law requires,¹ or to control an arbitrary or capricious exercise of discretion.² Mandamus will not issue, however, if petitioners have a plain, speedy and adequate remedy at law.³ Because mandamus is an extraordinary remedy, the decision whether to consider a petition requesting mandamus relief is entirely within this court's discretion.⁴

¹See NRS 34.160.

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

³NRS 34.170.

⁴Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

When factual, rather than legal, issues are presented, this court will not exercise its discretion to consider an original extraordinary writ petition.⁵ Thus, unless summary judgment is clearly required by a statute or rule, or an important issue of law requires clarification, this court generally will not exercise its discretion to consider writ petitions that challenge district court orders denying summary judgment motions.⁶ Instead, an appeal is usually an adequate legal remedy that will preclude extraordinary writ relief.⁷

We have considered this petition, and are not satisfied that this court's intervention by way of extraordinary relief is warranted. In this case, it is undisputed that petitioner Robert Molina's vehicle struck real party in interest Esmeralda Villalobos's vehicle, which was stopped at a traffic light. Petitioners assert that a third vehicle struck Molina's car from behind, propelling it into Villalobos's car, and thus, according to petitioners, they were not negligent and cannot be held responsible for any damages Villalobos may have sustained. Although there are indications that a third, unidentified car was involved, Villalobos argued, in her opposition to petitioners' summary judgment motion, that her statements regarding the third, unidentified car were based on Molina's assertions that he was struck by a third car, and not on her own knowledge about a third car's existence or role in the accident. Thus, it appears that disputed factual issues remain.

⁵Round Hill, 97 Nev. at, 604, 637 P.2d at 536.

⁶Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

⁷See Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004) (noting that petitioners carry the burden of demonstrating that extraordinary relief is warranted, and that an appeal is generally an adequate legal remedy that precludes writ relief).

Further, although petitioners argue that negligence cannot be grounded in "stopping too close" to another stopped vehicle, we are unable to conclude that, as a matter of law, the district court was required to grant summary judgment on the basis that petitioners could not be found negligent for their actions.⁸ And while petitioner Molina contends that he did not follow Villalobos's vehicle too closely, and that "he stopped several feet behind [her] motionless vehicle," such contentions again raise factual issues, which this court is not well suited to resolve.⁹ Moreover, in the event that petitioners are aggrieved by the district court's final judgment in the underlying action, petitioners will have an adequate legal remedy by way of appeal. Thus, as our intervention is not warranted here, we

ORDER the petition DENIED.¹⁰

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

⁸Petitioners rely on a 1966 Mississippi case that interpreted a Mississippi statute. The Mississippi statute, however, is not at play here.

⁹Round Hill, 97 Nev. at 604, 637 P.2d at 536.

¹⁰See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Douglas R. Johnson
Bailus Cook & Kelesis
Clark County Clerk