

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON PORTER, JERRY PORTER,  
AND JULIE PORTER,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
MARK R. DENTON, DISTRICT JUDGE,

Respondents,

and

ROBERTO MARTINEZ,  
Real Party in Interest.

No. 47021

**FILED**

JAN 11 2007

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 the district court's orders (1) denying petitioner's motion to dismiss and granting real party in interest's motion to enlarge time to serve; and (2) denying petitioner's motion for reconsideration.

Real party in interest retained counsel and sued petitioners for an alleged assault and battery in a school parking lot. The complaint was filed on November 5, 2004, and allegedly served on petitioners soon thereafter, but no proofs of service were filed. In September 2005, petitioners moved to dismiss the complaint under NRCP 4(i) for lack of timely service. In his opposition, real party in interest alleged that petitioners were served, but proofs of service were not filed due to clerical problems in his counsel's office. After conducting a hearing and analyzing the factors set forth in Scrimmer v. District Court<sup>1</sup>, the district court

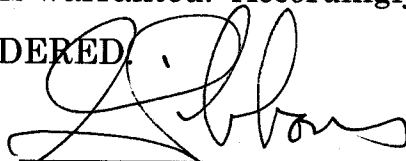
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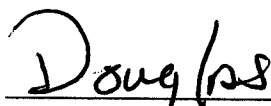
<sup>1</sup>116 Nev. 507, 998 P.2d 1190 (2000).

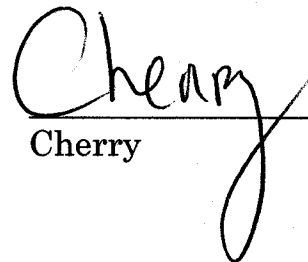
concluded that, although petitioners were not properly served, real party in interest's counsel was laboring under a misconception that they had in fact been served. The court denied petitioners' motion to dismiss and granted real party in interest's motion to enlarge the time to serve. The district court further denied petitioners' motion for reconsideration, and this writ petition followed.

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>2</sup> or to control a manifest abuse of discretion.<sup>3</sup> Mandamus is an extraordinary remedy, and it is within this court's discretion to determine if a petition will be considered.<sup>4</sup> Having considered this petition and the answer thereto, we are not satisfied that this court's intervention by way of extraordinary relief is warranted. Accordingly, we deny the petition.<sup>5</sup>

It is so ORDERED.

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

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

  
\_\_\_\_\_, J.  
Cherry

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<sup>2</sup>See NRS 34.160.

<sup>3</sup>See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

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

<sup>5</sup>See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

cc: Hon. Mark R. Denton, District Judge  
Lewis Brisbois Bisgaard & Smith, LLP  
Ethan M. Kottler  
Clark County Clerk