

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFF JOHNSON, AN INDIVIDUAL,
AND D/B/A PLATINUM
DEVELOPMENT,
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE,
AND THE HONORABLE ROBERT W.
LANE, DISTRICT JUDGE,
Respondents,
and
BILL WALSH AND ELAINE WALSH,
Real Parties in Interest.

No. 47203

FILED

MAY 03 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order that denied petitioner's motion for a jury trial.

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,¹ or to control a manifest abuse of discretion.² Mandamus is an extraordinary remedy and it is within the discretion of this court to

¹See NRS 34.160.

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

determine if a petition will be considered.³ Moreover, a writ of mandamus is available only when there is no speedy and adequate legal remedy available to the petitioner.⁴ This court has consistently held that an appeal is an adequate legal remedy that will preclude writ relief.⁵

The underlying case is currently scheduled for a one-day bench trial on May 5, 2006. Although this petition raises potentially important issues pertaining to whether the district court properly allowed the original jury trial demand to be withdrawn and whether the district court properly denied petitioner's subsequent request for a jury trial, we conclude that petitioner has an adequate and speedy remedy available in the form of an appeal from a final judgment in the underlying case.⁶ Once trial in the underlying case is completed and a final, written judgment is entered in the underlying case,⁷ petitioner, if aggrieved, will be free to

³See, e.g., Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

⁴NRS 34.170.

⁵See Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004).


⁶Id.

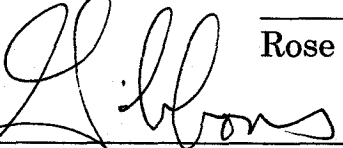
⁷Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987) (noting that only a written judgment may be appealed).

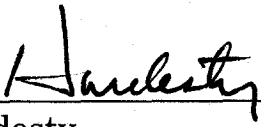
appeal,⁸ and he can challenge the district court's denial of his request for a jury trial as part of the appeal from the final judgment.⁹

As petitioner has a plain, speedy, and adequate legal remedy available in the form of an appeal from the final judgment in the underlying case, we conclude that our intervention by way of extraordinary relief is not warranted.¹⁰ Accordingly, we deny the petition.

It is so ORDERED.¹¹


_____, C.J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁸NRAP 3A(a), (b)(1).

⁹See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 971 P.2d 1251 (1998) (providing that, generally, interlocutory orders may be challenged within the context of an appeal from the final judgment).

¹⁰See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

¹¹We note that under NRAP 21(a) a petitioner seeking extraordinary relief has the burden of demonstrating that this court's intervention is warranted. See Pan, 120 Nev. at 228-29, 88 P.3d at 844. Here, petitioner has failed to meet his NRAP 21(a) burden by providing sufficient supporting documentation to demonstrate that this court's intervention by way of extraordinary relief is warranted. Accordingly, petitioner's failure to meet his NRAP 21(a) burden constitutes an independent basis for denying this petition.

cc: Hon. Robert W. Lane, District Judge
Parker Nelson & Arin, Chtd.
Carl M. Joerger
Nye County Clerk