

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARY REBECCA SHELTON,
SUCCESSOR TRUSTEE OF THE CARL
JAY THOMAS AND BERTHA BOYD
THOMAS FAMILY TRUST,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
KATHY A. HARDCASTLE, DISTRICT
JUDGE,

Respondents,

and

JOHNNY A. RIBEIRO, JR.; LINDA
MCLAUGHLIN RIBEIRO; AND BRYAN
DZIEDZACK,

Real Parties in Interest.

No. 47627

FILED

SEP 08 2006

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order that granted a motion to dismiss two of petitioner's claims for relief.

Petitioner instituted the underlying action based on real parties in interest's purportedly fraudulent conduct during the sale and purchase of petitioner's interests in certain general and limited partnerships. Petitioner's complaint included a claim under a civil anti-racketeering statute, NRS 207.400, and contract, fraud, and conspiracy claims. Pursuant to real parties in interest's motion, the district court entered an order that dismissed petitioner's NRS 207.400 and conspiracy claims. The district court dismissed the latter claim without prejudice.

According to petitioner, claims of fraud, breach of contract, and breach of fiduciary duty remain pending in the district court. Petitioner requests that this court direct the district court to vacate its order dismissing her NRS 207.400 and conspiracy claims or, alternatively, that this court direct the district court to permit petitioner to amend those claims.¹

A writ of mandamus is available to compel the performance of an act that the law requires, or to control an arbitrary or capricious exercise of discretion.² Mandamus is an extraordinary remedy, however—a petition for which is addressed to this court’s sole discretion.³ And this court has generally declined to exercise its discretion to entertain petitions for extraordinary relief when the petitioner has a plain, speedy, and adequate legal remedy.⁴

¹We note that, although the district court ostensibly has not precluded petitioner from amending her conspiracy claim, as it was dismissed without prejudice, petitioner maintains that this is illusory because “any amendment of the [NRS 207.400] claim was barred and the court required [petitioner] to allege the individual benefits of an intracorporate conspiracy when no intracorporate conspiracy was involved here.”

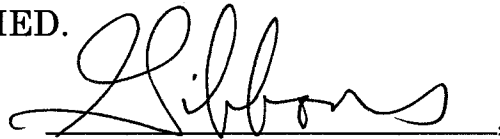
²See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

³See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith v. District Court, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (recognizing that few writ petitions warrant extraordinary relief and setting forth the very limited exceptions to this general rule).

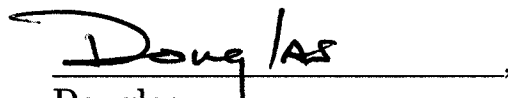
⁴See NRS 34.170.

In this respect, this court has consistently held that an appeal is an adequate legal remedy precluding writ relief.⁵ Thus, as petitioner has an adequate legal remedy available in the form of an appeal from any adverse final judgment entered in the underlying case⁶—and petitioner has not demonstrated otherwise⁷—we are not satisfied that this court’s intervention by way of extraordinary relief is warranted at this time.⁸ We therefore

ORDER the petition DENIED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

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

⁶See NRAP 3A(b)(1).

⁷See Pan, 120 Nev. at 228, 88 P.3d at 844 (noting that the petitioner carries the burden of demonstrating that extraordinary relief is warranted).

⁸See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

cc: Hon. Kathy A. Hardcastle, District Judge
Littler Mendelson/Reno
Woodburn & Wedge
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk