

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREHNER CONSTRUCTION
COMPANY, INC.; AGGREGATE
INDUSTRIES, INC.; AND CITY OF LAS
VEGAS, A MUNICIPAL
CORPORATION EXISTING UNDER
LAWS OF THE STATE OF NEVADA IN
THE COUNTY OF CLARK,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
KENNETH C. CORY, DISTRICT
JUDGE,

Respondents,

and

MARISOL TEJEDA, INDIVIDUALLY;
MARISOL TEJEDA, AS MOTHER AND
GUARDIAN OF ROGELIO OSMAN
TEJEDA, A MINOR; MARISOL
TEJEDA, AS SPECIAL
ADMINISTRATRIX OF THE ESTATE
OF OSMAN TEJEDA, DECEASED; AND
LORI ELDREDGE, AS GUARDIAN AD
LITEM OF SPENCER TEJEDA
HICKMAN, A MINOR,
Real Parties in Interest.

No. 47824

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's oral order denying a motion for summary judgment based

on petitioners' assertion that they are entitled to immunity under the Nevada Industrial Insurance Act (NIIA).¹

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,² or to control an arbitrary or capricious exercise of discretion.³ Mandamus will not issue, however, when the petitioners have a plain, speedy and adequate remedy in the ordinary course of law.⁴ Accordingly, this court will not exercise its discretion to consider petitions that challenge district court orders denying motions for summary judgment, unless summary judgment is clearly required by a statute or rule, or an important issue of law requires clarification.⁵ Petitioners bear the burden to demonstrate that this court's intervention by way of extraordinary relief is warranted.⁶

We have considered this petition, and we are not satisfied that petitioners have met their burden to show that this court's intervention by way of extraordinary relief is appropriate. In particular, petitioners have

¹NRS Chapters 616A-616D; NRS 616A.005.

²NRS 34.160; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

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


⁴Gumm v. State, Dep't of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005); NRS 34.170.


⁵Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

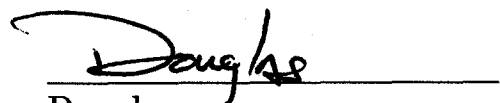
⁶Pan v. Dist. Ct., 120 Nev. 222, 228-29, 88 P.3d 840, 844 (2004).

not demonstrated that they are clearly entitled to NIIA immunity from suit.⁷ Accordingly, we deny the petition.⁸

It is so ORDERED.


Gibbons J.


Maupin J.


Douglas J.

cc: Hon. Kenneth C. Cory, District Judge
Lewis Brisbois Bisgaard & Smith, LLP
Edward M. Bernstein & Associates/Las Vegas
Law Offices of Valarie I. Fujii & Associate
Rawlings Olson Cannon Gormley & Desruisseaux
Clark County Clerk

⁷See, e.g., Antonini v. Hanna Industries, 94 Nev. 12, 19, 573 P.2d 1184, 1189 (1978) (indicating that an entity that contracts with a broker for labor services, while possibly a statutory employer of the laborer (as determined under the now-abolished “control test”), has “provided and secured compensation” through the broker only if the broker maintains full coverage under the NIIA), overruled in part by Harris v. Rio Hotel & Casino, 117 Nev. 482, 25 P.3d 206 (2001).

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