

IN THE SUPREME COURT OF THE STATE OF NEVADA

ASHLEY HALL, RECEIVER FOR
ELITE PROFESSIONAL SECURITY
COMPANY,

Petitioner,

vs.

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

Respondents,

and

NESIBA NUKIC, AS SURVIVING
SPOUSE AND HEIR AT LAW OF ZIJAD
NUKIC, DECEASED; MUMIN NUKIC,
A MINOR, AS HEIR AT LAW OF ZIJAD
NUKIC, DECEASED, BY AND
THROUGH NESIBA NUKIC, HIS
MOTHER AND GUARDIAN AD LITEM;
AND DAMIRA NUKIC, SURVIVING
DAUGHTER AND HEIR AT LAW OF
ZIJAD NUKIC, DECEASED,
Real Parties in Interest.

No. 47836

FILED

AUG 28 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 seeks an order vacating a district court order denying petitioner's motion to stay a wrongful death suit and directing the court to grant the stay motion.

On May 4, 2006, the district court judge assigned to a proceeding filed by the owners of Elite Professional Security Company (EPS) for the appointment of a receiver to protect EPS's interests and assets, appointed petitioner Ashley Hall as the receiver over EPS's assets. The order appointing Hall as receiver enjoined the maintenance of suits to "enforce claims against EPS's assets." Consequently, Hall moved the

district court judge presiding over an unrelated pending wrongful death action brought against EPS by real parties in interest, to stay those proceedings in accordance with the order appointing a receiver's injunction. The district court refused to stay the wrongful death action, and consequently, Hall has petitioned this court to compel the district court to stay that action.

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 an arbitrary or capricious exercise of discretion.² Generally, the writ will issue only when the petitioner has no plain, speedy, and adequate remedy in the ordinary course of law.³ Further, mandamus is an extraordinary remedy, and whether a petition will be entertained is entirely within this court's discretion.⁴

Here, although Hall appears to have no adequate legal remedy, as the petitioner, he bears the burden to demonstrate that this court's intervention by way of extraordinary relief is warranted.⁵ Hall has not met that burden. In particular, it is not clear that the injunction actually enjoins the court from proceeding with the in personam, wrongful

¹NRS 34.160; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

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

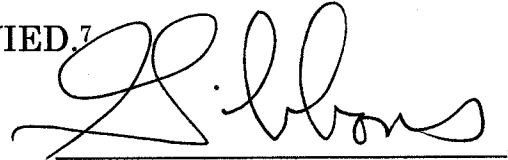
³Gumm v. State, Dep't of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005); NRS 34.170.

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

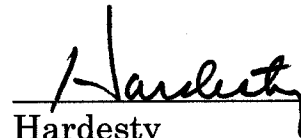
⁵Pan v. Dist. Ct., 120 Nev. 222, 228-29, 88 P.3d 840, 844 (2004).

death tort action, as that action apparently was not brought to enforce a claim.⁶ Accordingly, as Hall has not shown that the district court did not improperly deny Hall's motion to stay the wrongful death action, we

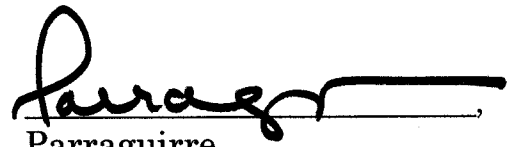
ORDER the petition DENIED.⁷



Gibbons J.



Hardesty J.



Parraguirre J.

⁶See, e.g., Riehle v. Margolies, 279 U.S. 218, 223, 224 (1929) (holding that the determination of the existence and amount of a claim is an in personam act that “does not deal directly with any of the property,” and thus, since a receivership court may protect its jurisdiction only with respect to its control over the property, it generally lacks power to enjoin suits brought solely in personam); accord Chicago Title & Trust Co. v. Fox Theatres Corporation, 69 F.2d 60, 62 (2d Cir. 1934) (stating that, “[s]ince liquidation of a debt does not directly deal with distribution, a suit seeking such liquidation does not interfere with the jurisdiction of the receivership court, and hence cannot be enjoined”); see also Securities & Exch. Com’n v. Wenke, 622 F.2d 1363, 1369, 1371 (9th Cir. 1980) (implying that injunctions are available only when “necessary to achieve the purposes of the receivership”); In re International Reinsurance Corporation, 48 A.2d 529, 538 (Del. Ch. 1946) (recognizing that, under Riehle, a receivership court is generally powerless to enjoin personal injury suits against a receivership entity).

⁷In light of this order, the motion for a stay and motion to expedite this court's consideration of the stay motion are denied as moot.

cc: Hon. Timothy C. Williams, District Judge
Adams & Rocheleau, LLC
Asberom & Brown
Clark County Clerk