

IN THE SUPREME COURT OF THE STATE OF NEVADA

APCO CONSTRUCTION AND
GRANITE CONSTRUCTION
COMPANY,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE VALERIE ADAIR,
DISTRICT JUDGE,

Respondents,

and

CLARK COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA; AND MCCARTHY
BUILDING COMPANIES, INC., A
NEVADA CORPORATION,
Real Parties in Interest.

No. 48083

FILED

SEP 26 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [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 APCO Construction's motion for a preliminary injunction and dismissed its complaint. We have considered

this petition, and we conclude that this court's intervention by way of extraordinary relief is not warranted.¹

Specifically, this court generally will exercise its discretion to consider a petition for extraordinary relief only when the petitioner has no plain, speedy, and adequate legal remedy,² and this court has consistently held that an appeal is an adequate legal remedy precluding writ relief.³ Here, because the challenged district court order is appealable under NRAP 3A(b)(2), as an order denying a preliminary injunction, and also appears to be appealable under NRAP 3A(b)(1), as a final judgment, APCO has an adequate and speedy legal remedy in the form of an appeal from the district court's order.⁴ Accordingly, we deny the petition.⁵

¹See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

²NRS 34.170.

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

⁴See NRAP 4(a)(1) (stating that the notice of appeal must be filed within 30 days from the date when written notice of entry of the order appealed from is served).

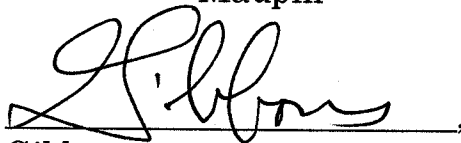
⁵We deny petitioner Granite Construction Company's motion to intervene in this matter. A writ of mandamus is available to "compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station," see NRS 34.160, or to control a manifest abuse of discretion, see Round Hill General Improvement District v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Because Granite was not a

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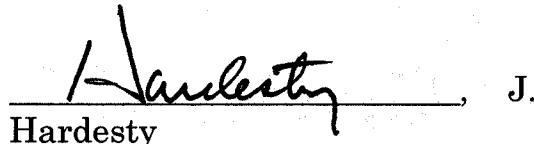
It is so ORDERED.⁶

 J.

Maupin

 J.

Gibbons

 J.

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party to the underlying matter—and did not seek to be—the district court owes no duty to Granite and could not have manifestly abused its discretion with the respect to Granite. Thus, as regards Granite, this court is not in a position to compel the district court to do anything. Cf. Secretary of State v. Nevada Legislature, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004) (recognizing that a party establishing standing to seek extraordinary relief must demonstrate “a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted” (quoting Lindelli v. Town of San Anselmo, 4 Cal. Rptr. 3d 453, 461 (2003))). Further, because Granite does not have standing to intervene, we direct the clerk of this court to strike Granite’s “Joinder Petition in Support of APCO Construction[.]”

⁶We deny as moot petitioner’s request for a stay. We note, moreover, that a motion for a stay should properly have been made to the district court in the first instance and that “the district court’s one-line denial of the relief sought by [petitioner] without findings of fact or conclusions of law” does not necessarily imply that a motion to the district court is impracticable. See NRAP 8(a); Nelson v. Heer, 121 Nev. ___, 122 P.3d 1252 (2005).

cc: Hon. Valerie Adair, District Judge
Fennemore Craig, P.C.
Clark County District Attorney David J. Roger/Civil Division
Holland & Hart
Morris Pickering Peterson & Trachok/Reno
Clark County Clerk