

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE JEWELRY SALON AT THE FOUR SEASONS,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE LEE A. GATES, DISTRICT JUDGE,  
Respondents,  
and  
CRAIG DRAKE MANUFACTURING, INC.,  
Real Party in Interest.

No. 48262

**FILED**

MAR 09 2007

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

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court order denying petitioner's motion to vacate an evidentiary hearing.

The underlying matter commenced in the district court in November 2004, when real party in interest Craig Drake Manufacturing, Inc., instituted a contract action against petitioner The Jewelry Salon at the Four Seasons to collect money that The Jewelry Salon purportedly owed it under the parties' agreement. Thereafter, Craig Drake moved for summary judgment, which the district court granted on September 28, 2005, awarding Craig Drake approximately \$162,000 plus interest. Notice of the order's entry was served the next day.

After obtaining the \$162,000 judgment, Craig Drake conducted a judgment debtor examination of The Jewelry Salon. At that proceeding, The Jewelry Salon's principal, Robert Frank, apparently testified that (1) he had paid personal expenses with, and removed some of, The Jewelry Salon funds, and (2) The Jewelry Salon had changed its

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name. Based on that testimony, on June 7, 2006, Craig Drake filed a motion to amend the September 28 judgment to hold Frank individually liable on the judgment as an alter ego of The Jewelry Salon, arguing that Frank had misused its funds, failing to maintain it as a separate entity, and to reflect The Jewelry Salon's new name. The Jewelry Salon opposed the motion to the extent that Craig Drake requested the judgment to be amended to bind Frank to it.

Thereafter, on September 12, 2006, the district court entered an order directing that the September 28, 2005 judgment be amended to reflect The Jewelry Salon's name change and, with respect to Craig Drake's request that Frank be held individually liable on the judgment, setting an evidentiary hearing to determine whether Frank was an alter ego of The Jewelry Salon.

The Jewelry Salon subsequently filed a motion to vacate the evidentiary hearing, which Craig Drake opposed. At the conclusion of an October 3, 2006 hearing on the motion, the district court denied it. This petition followed, in which The Jewelry Salon<sup>1</sup> seeks a writ of prohibition

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<sup>1</sup>Craig Drake argues that The Jewelry Salon lacks a sufficient beneficial interest, and thus lacks standing, to seek preclusion of the district court from proceeding with the evidentiary hearing on the alter-ego issue raised in Craig Drake's motion. See NRS 34.330. That argument is unavailing. In particular, Frank's liability as an alter ego of The Jewelry Salon necessarily implicates disregarding its corporate existence. See Ecklund v. Nevada Wholesale Lumber Co., 93 Nev. 196, 562 P.2d 479 (1977). Certainly The Jewelry Salon has a beneficial interest in halting district court proceedings in pursuit of disregarding its existence as a distinct corporate entity. See Secretary of State v. Nevada State Legislature, 120 Nev. 456, 461, 93 P.3d 746, 749 (2004) (noting that a party seeking a writ must demonstrate that it will gain a direct benefit from its issuance).

to preclude the district court from proceeding with the evidentiary hearing.<sup>2</sup> After reviewing the petition, we directed Craig Drake to file an answer against issuance of the requested writ, which Craig Drake timely filed.

This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court.<sup>3</sup> A petition for a writ of prohibition is addressed to the sound discretion of this court.<sup>4</sup> Moreover, such a writ may issue only when there is no plain, speedy, and adequate legal remedy.<sup>5</sup>

Having considered the petition, its supporting documentation, and the answer, we conclude that our intervention by way of extraordinary relief is warranted. Specifically, this court plainly stated in Greene v. District Court that “[o]nce a judgment is final, it should not be reopened except in conformity with the Nevada Rules of Civil Procedure.”<sup>6</sup>

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<sup>2</sup>With respect to Craig Drake’s argument that this matter is not ripe for our intervention because the district court’s pronouncement that denied The Jewelry Salon’s motion and directed the parties to agree to a date for the evidentiary hearing has not been reduced to a formal written order, we note that “oral court orders pertaining to case management issues[ and] scheduling . . . are valid and enforceable,” State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004), and thus generally challengeable.

<sup>3</sup>NRS 34.320.

<sup>4</sup>Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

<sup>5</sup>NRS 34.330.

<sup>6</sup>115 Nev. 391, 395, 990 P.2d 184, 186 (1999); see also Dredge Corp. v. Peccole, 89 Nev. 26, 505 P.2d 290 (1973) (concluding that the district

*continued on next page . . .*

Here, the September 28 order constitutes a final judgment, notice of which was served the following day, September 29, 2005. Yet Craig Drake filed its motion to amend the judgment over eight months later.<sup>7</sup> Too much time, then, has passed for Craig Drake to seek to amend the judgment to bind Frank to it. The district court therefore lacks jurisdiction to conduct proceedings concerning Craig Drake's motion to amend the judgment.<sup>8</sup>

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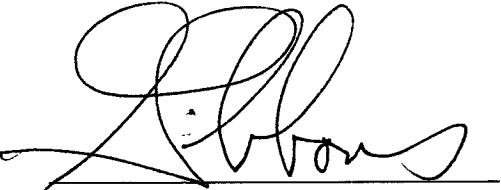
court is without jurisdiction to alter a final judgment except in conformity with the rules of procedure governing motions after final judgment), cited in Pickett v. Comanche Construction, Inc., 108 Nev. 422, 428, 836 P.2d 42, 46 (1992).

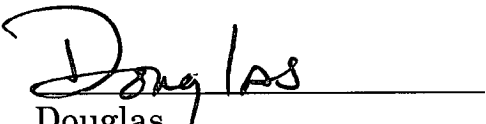
<sup>7</sup>See NRCP 59(e) (requiring that a motion to amend a judgment be filed "no later than [ten] days after service of written notice of entry of the judgment"); NRCP 60(b) (requiring that a motion to set aside a judgment be filed within a reasonable time, not exceeding six months in most instances).

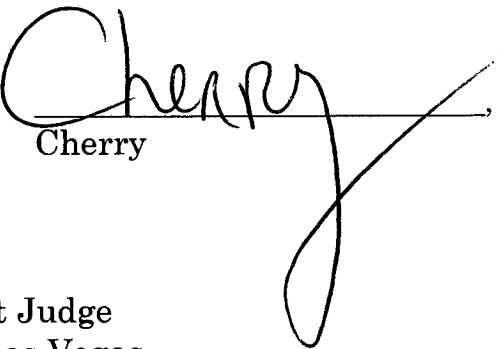
<sup>8</sup>Craig Drake contends that, under this court's decision in McCleary Cattle Co. v. Sewell, 73 Nev. 279, 317 P.2d 957 (1957) (affirming a district court's decision to bind to a final judgment a party that the judgment creditor indisputably demonstrated was the judgment debtor's alter ego), the district court has jurisdiction to amend the judgment. That argument is unpersuasive. As the McCleary court noted, the evidence before it so overwhelmingly demonstrated that the judgment debtor and alleged alter ego were identical that, "[u]nder the circumstances," id. at 282, 317 P.2d at 959, extending the judgment to the alter ego was akin to simply "correct[ing] a misnomer," id. at 283, 317 P.2d at 959 (quoting Mirabito v. San Francisco Dairy Co., 47 P.2d 530, 532 (Cal. Ct. App. 1935)). Here, even assuming the truth of Craig Drake's allegations in its motion to amend the judgment, and its reply to The Jewelry Company's opposition thereto, they do not compel the same conclusion to justify undermining the finality of the September 28 judgment. See Greene v. Dist. Ct., 115 Nev. at 395, 990 P.2d 184, 186 (noting the "serious repercussions" of reopening final judgments except in conformity with the rules of civil procedure).

Accordingly, we grant the petition, and direct the clerk of this court to issue a writ of prohibition directing the district court to refrain from proceeding with the evidentiary hearing, or otherwise acting on the motion to amend the judgment.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Lee A. Gates, District Judge  
Beckley Singleton, Chtd./Las Vegas  
Beverly J. Salhanick  
Eighth District Court Clerk