

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL AHLSTROM, PUBLIC
ADMINISTRATOR TO THE ESTATE
OF CLAY MAGNESON,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
ACACEA SIREN,
Real Party in Interest.

No. 48354

FILED

FEB 08 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT
OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss. The underlying personal injury action arose from an automobile accident that occurred on September 1, 2003, in which real party in interest Acacea Siren was a passenger in Clay Magneson's car. Magneson died as a result of the accident, and Siren sustained injuries. On November 15, 2004, Siren filed a complaint for damages, naming the deceased, Clay Magneson, among others.

Since, at the time when Siren filed her complaint, an estate had not been established for Magneson, Siren petitioned the probate court to involuntarily open an estate. Thereafter, on February 18, 2005, petitioner Dan Ahlstrom was appointed as Special Administrator of Magneson's estate. On March 14, 2005, Siren served Ahlstrom with the

summons and complaint, naming Clay Magneson as a defendant. Even though, on June 6, 2005, the district court directed Siren to amend the complaint's caption to name Ahlstrom, Siren did not amend her complaint until March 28, 2006. In the meantime, the statute of limitations on Siren's claims had expired, on September 2, 2005.

Ahlstrom subsequently filed a motion to dismiss Siren's amended complaint on statute of limitations grounds. Siren opposed the motion, arguing that the action against the estate was timely commenced, and noting that the complaint (naming Magneson, individually) was served on Ahlstrom well before the limitations period had expired. The district court denied the motion to dismiss. This writ petition followed, challenging the district court's failure to dismiss the action as to the estate. Siren timely filed an answer, as directed.

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.¹ A writ of prohibition is available to arrest extra-jurisdictional judicial proceedings.² Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if a petition will be considered.³ And unless no disputed factual issues exist and dismissal is clearly required by a statute or rule, or an important issue of law requires clarification, this court will not exercise its discretion to consider writ petitions that challenge district court orders

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

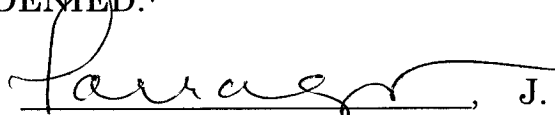
²See NRS 34.320.

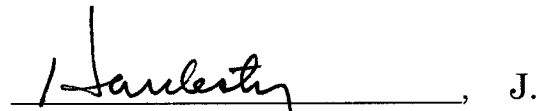
³See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

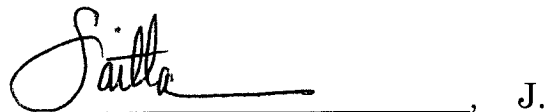
denying motions to dismiss.⁴ It is petitioner's burden to demonstrate that extraordinary relief is warranted.⁵

Having considered this petition, its supporting documents, and Siren's answer, we conclude that our intervention by way of extraordinary relief is not warranted.⁶ Accordingly, we

ORDER the petition DENIED.⁷


Parraguirre


Hardesty


Saitta

⁴Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997); see also Conklin Ex Rel. v. Buckingham, 58 Nev. 450, 453, 83 P.2d 462, 463 (1938) (recognizing that a writ of mandamus will issue only when a clear legal right to the requested relief is shown).

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

⁶Servatius v. United Resort Hotels, 85 Nev. 371, 372-73, 455 P.2d 621, 622-23 (1969) (providing that a complaint may be amended to correct a mistake in the name of a party, but a new party may not be brought into an action once the statute of limitations expired, unless the new party had actual notice of the action, knew it was the proper defendant in the action, and was not misled to its prejudice).

Here, it appears that Ahlstrom, as the appointed Special Administrator to the estate, had actual notice of Siren's personal injury action, knew that the estate was the proper defendant, and was not misled to the estate's prejudice. Id.

⁷See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

cc: Hon. Mark R. Denton, District Judge
Jolley Urga Wirth Woodbury & Standish
Prince & Keating, LLP
Robinson & Wood
Parker Nelson & Arin, Chtd.
Eighth District Court Clerk