

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CARTER DANIS,
INDIVIDUALLY,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JESSIE WALSH, DISTRICT JUDGE,
Respondents,
and
YANCEY J. ADKINS,
Real Party in Interest.

No. 49017

FILED

MAY 11 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying petitioner's motion to strike the real party in interest's request for a trial de novo.

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 Mandamus is an extraordinary remedy, however, and its issuance is within this court's sole discretion.² A petitioner seeking mandamus relief has the burden of demonstrating that this court's

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

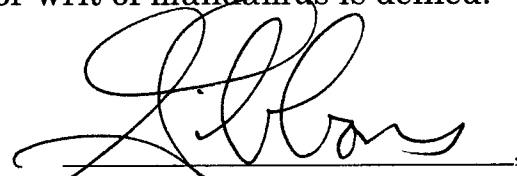
²See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

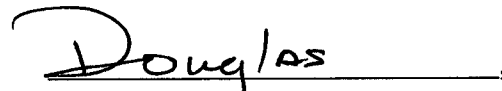
intervention is warranted.³ However, under NRS 34.170, mandamus relief is not available if there is a plain, speedy, and adequate remedy at law.⁴

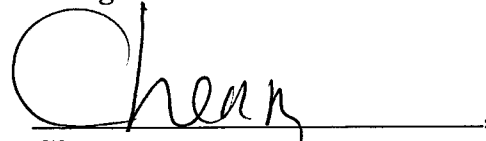
Here, in his answer to the writ petition, counsel for the real party in interest explained that the real party in interest has passed away and that his estate does not wish to pursue the underlying matter any further. Counsel notes that after this petition was filed, during the first week of April 2007, he submitted to petitioner the estate's proposed stipulation and order to voluntarily dismiss the case below with prejudice. The court's dismissal of the underlying matter would terminate any and all further proceedings, including the trial de novo.

Accordingly, as petitioner appears to have a plain, speedy, and adequate legal remedy, the petition for writ of mandamus is denied.⁵

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

³Pan v. Dist. Ct., 120 Nev. 222, 228-229, 88 P.3d 840, 844 (2004); NRAP 21(a).

⁴Id. at 224, 88 P.3d at 841.

⁵Id.; NRS 34.170.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Law Offices of Douglas R. Johnson
Fassett & Cardoza
Eighth District Court Clerk