

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS,  
Appellant,  
vs.  
ALLEGHENY CASUALTY COMPANY  
AND BBI OF BOULDER CITY,  
Respondents.

No. 49352

**FILED**

MAR 07 2008

TRACIE K. LINDSEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a permanent writ of mandate directing the municipal court to exonerate a bail bond. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On appeal, appellant the City of Las Vegas primarily argues that the district court could not have properly determined that the municipal court abused its discretion in denying respondents Allegheny Casualty Company and BBI of Boulder City's (collectively, "the Sureties") request to exonerate the bond without having reviewed the transcript of the municipal court hearing. The City of Las Vegas further argues that the Sureties failed to meet the requirements for exoneration relief under the Nevada bail bonds statutes.

A writ of mandate is available to compel the performance of an act that the law requires or to control a manifest abuse of discretion.<sup>1</sup> Writs of mandate may only issue when there is no plain, speedy, or

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

adequate remedy at law.<sup>2</sup> Because the municipal court is often required to make factual determinations regarding bail bond matters, and since the district court should not disturb those findings “unless they are clearly erroneous and not based on substantial evidence,” a writ generally is not warranted when the municipal court’s decision is supported by substantial evidence.<sup>3</sup> We review district court orders granting a petition for a writ of mandate for an abuse of discretion.<sup>4</sup>

Having reviewing the record and considering the parties’ appellate arguments, we conclude that the district court abused its discretion in granting extraordinary relief, for two reasons. First, in issuing the writ of mandate, the district court’s order was limited to its determination that the Sureties had “no other plain, speedy or adequate remedy in the ordinary course of law.” The order, however, fails to indicate whether the writ was being issued to compel the performance of an act that the law required or because the court found that the municipal court had manifestly abused its discretion or acted in an arbitrary or capricious manner.<sup>5</sup> Moreover, even were we to infer that the district court determined that the municipal court had manifestly abused its discretion or acted in an arbitrary or capricious manner, the court could

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<sup>2</sup>See NRS 34.170.

<sup>3</sup>See International Fid. Ins. v. State of Nevada, 122 Nev. 39, 42, 126 P.3d 1133, 1134-35 (2006).

<sup>4</sup>DR Partners v. Bd. of County Comm’rs, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

<sup>5</sup>See NRS 34.160; Round Hill Gen. Imp. Dist., 97 Nev. 601, 637 P.2d 534.

not have properly evaluated the petition's merits and made such findings without having the municipal court transcript before it.<sup>6</sup>

Second, we conclude that the Sureties failed to surrender the bail absconder to the Las Vegas Municipal Court, the original custodial authority, to satisfy the statutory grounds for bond exoneration. NRS 178.522(2) provides that “[a] surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.”<sup>7</sup> However, if the defendant is located in the custody of a peace officer in Nevada, “other than the officer to whose custody he was committed at the time of giving bail, the [surety] may make application to the court for the discharge of his bail bond.”<sup>8</sup> Here, after locating the bail absconder in another jurisdiction, the Sureties failed to file an application with the Las Vegas Municipal Court to discharge the bail bond or post the

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<sup>6</sup>Indeed, we have analogously recognized that when an appellant fails to include necessary documentation in the record for our review, we presume that the missing portion supports the district court's decision. See Prabhu v. Levine, 112 Nev. 1538, 1549, 930 P.2d 103, 111 (1996). Moreover, although the Sureties have offered a copy of the municipal court transcript for our review, we have not considered it, as it was not part of the district court record. Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476-77, 635 P.2d 276, 277-78 (1981).

<sup>7</sup>See NRS 178.522.

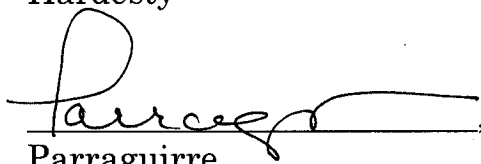
<sup>8</sup>See NRS 178.524 (further stating that the surety “shall then give to the court an amount in cash or a surety bond sufficient in amount to guarantee reimbursement of any costs that may be expended in returning the defendant to the officer to whose custody the defendant was committed at the time of giving bail”).

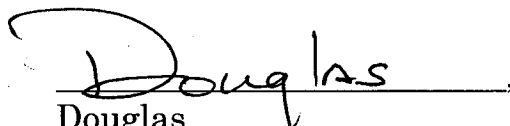
required transportation bond in order to allow the municipal court to consider discharging the Sureties' bond.<sup>9</sup>

Accordingly, we reverse the district court's order and remand this matter to the district court to vacate its writ of mandate.

It is SO ORDERED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

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

cc: Hon. Kathy A. Hardcastle, District Judge  
Las Vegas City Attorney  
Las Vegas City Attorney/Criminal Division  
Osvaldo E. Fumo, Chtd.  
Eighth District Court Clerk

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<sup>9</sup>Although, before the forfeiture date, the Sureties sent a letter to the City of Las Vegas Attorney requesting exoneration of the bond, nothing in the record suggests that the Sureties filed an application with the municipal court to exonerate the bond, as required by NRS 178.509(1)(b).