

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARREN R. MACK,  
Petitioner,


vs.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE, AND THE HONORABLE  
DAVID A. HUFF, DISTRICT JUDGE,  
Respondents,  
and  
ESTATE OF CHARLA MACK,  
Real Party in Interest.

No. 49676

**FILED**

JUL 05 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a probate commissioner's recommendation for a preliminary injunction and a family court qualified domestic relations order, entered nunc pro tunc to pre-date the payee spouse's death. In violation of NRAP 21(a), the petition contains no supporting documentation whatsoever, not even copies of the challenged orders.

NRAP 21(a) requires that a petition to this court for extraordinary relief "shall contain . . . copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition." In Pan v. District Court,<sup>1</sup> we emphasized that "[p]etitioners carry the burden of demonstrating that

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<sup>1</sup>120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

extraordinary relief is warranted,” and we explained the reasons for NRAP 21(a)’s requirements:

The reasons for NRAP 21(a)’s requirements are simple. A petition for writ relief invokes this court’s original jurisdiction. Our review in a writ proceeding is limited to the argument and documents provided by the parties. If essential information is left out of the petition and accompanying documentation, we have no way of properly evaluating the petition. We routinely receive and deny writ petitions that fail to comply with NRAP 21(a). The time and energy expended reviewing these deficient petitions wastes this court’s valuable and limited judicial resources.<sup>2</sup>

Here, the petition claims that the probate commissioner recommended a preliminary injunction, and that, in petitioner’s divorce action, the family court entered a nunc pro tunc qualified domestic relations order. But petitioner attached no copies of the challenged decisions, the motions, oppositions, or other papers presented to the district court, or transcripts of any hearings. We are completely unable to evaluate the petition’s merits without these types of documentary support.

We note that the petition contains a footnote stating that counsel’s verification supports the petition’s factual allegations, and suggesting that this court may order the district court record in the probate and divorce cases, if deemed necessary. We conclude that counsel’s verification is insufficient, and we reject petitioner’s suggestion.

First, counsel’s verification, in place of NRS 34.170’s requirement of an affidavit from the party beneficially interested, is

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<sup>2</sup>Id. at 229, 88 P.3d at 844.

appropriate if counsel has knowledge of the facts asserted or if the party is absent from the county or otherwise unable to verify the petition.<sup>3</sup> In either case, if counsel's verification is to be substituted, then the affidavit or verification must state why it was not made by the party.<sup>4</sup> Here, counsel's brief verification does not explain why petitioner did not verify the petition or sign an affidavit in its support. Moreover, even if counsel's verification were sufficient to serve as the affidavit of the party beneficially interested under NRS 34.170, it still would not satisfy NRAP 21(a)'s requirement that the "order or opinion or parts of the record which may be essential" be supplied along with the petition.

Next, NRAP 21(a) places the burden of providing sufficient documentation to permit this court's review squarely on the petitioner. Petitioner's suggestion that we instead relieve him of his NRAP 21(a) burden by ordering the district court to produce the record from two separate district court proceedings (the probate case and the divorce case), thus transferring the burden to the district court clerk's office, is wholly inappropriate.


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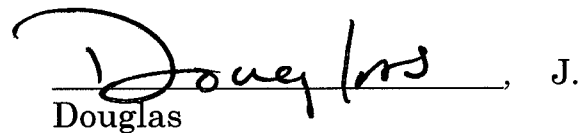
<sup>3</sup>See NRS 15.010(1).

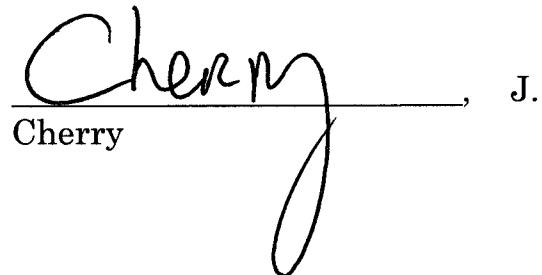
<sup>4</sup>See Thompson v. District Court, 100 Nev. 352, 353 n.1, 683 P.2d 17, 18 n.1 (1984) (citing NRS 15.010(2)).

Having reviewed the petition, we are not persuaded that extraordinary relief is warranted at this time.<sup>5</sup> Accordingly, we deny the petition.<sup>6</sup>

It is so ORDERED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Cherry

cc: Hon. David A. Huff, District Judge  
Law Offices of Mark Wray  
Kreitlen & Walker  
Washoe District Court Clerk

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<sup>5</sup>See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (noting that whether to grant extraordinary relief is within this court's discretion).

<sup>6</sup>See NRAP 21(b).