

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGES TANNOURY, M.D., AN  
INDIVIDUAL,

Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF NYE,  
AND THE HONORABLE DAN L.  
PAPEZ, DISTRICT JUDGE,

Respondents,

and


MARY MCDONNELL; WANDA  
BLOHM; ED SHARP; PATRICIA  
MANKINS; ALAN POPE; BOARD OF  
TRUSTEES OF PAHRUMP  
COMMUNITY HOSPITAL DISTRICT,  
AND THE PAHRUMP COMMUNITY  
HOSPITAL DISTRICT,

Real Parties in  
Interest.

No. 49688

**FILED**

JUN 26 2007

WANNETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion for a preferential trial setting. We have considered the petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. See NRAP 21(b).

From the documents before this court, it appears the action below was commenced on April 17, 2002. In a previous writ proceeding involving this matter, McDonnell vs. District Court (Tannoury), Docket No. 39560, this court stayed the proceedings in the district court. Taking the stay into account, the parties and the district court agree that the last

day the case could be brought to trial is June 27, 2007. See NRCP 41(e) (an action shall be dismissed unless it is brought to trial within 5 years after the plaintiff filed the action).

After more than two years passed without petitioner taking any action on the case, petitioner's counsel apparently contacted the district court on May 24, 2007, attempting to secure a trial date before June 27, 2007. On May 24, 2007, counsel learned that the administrative assistant for the district court would be out of the office until May 29, 2007,<sup>1</sup> and did not contact the district court again until that date. On May 29, 2007, counsel was informed that the court's crowded calendar could not accommodate a trial setting before June 27, 2007. On or about June 8, 2007, petitioner's counsel filed a motion for a preferential trial setting, again seeking a trial date before June 27, 2007. After a telephonic hearing on the motion, the district court denied the motion. The written order denying the motion for a preferential trial setting was entered on June 22, 2007.<sup>2</sup>

"Mandamus is an extraordinary remedy, and the decision as to whether a petition will be entertained lies within the sound discretion of this court." Brewery Arts Ctr. v. State Bd. Examiners, 108 Nev. 1050, 1053, 843 P.2d 369, 372 (1992). A writ of prohibition is available when a district court acts without or in excess of its jurisdiction. State of Nevada

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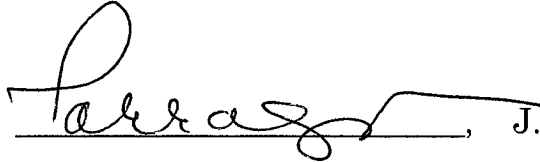
<sup>1</sup>May 28, 2007, was Memorial Day, and therefore a non-judicial day.

<sup>2</sup>We note that "the district court is not compelled to monitor for a potential NRCP 41(e) problem, *sua sponte*, giving a case any preference in setting the trial prior to a deadline pursuant NRCP 41(e)." Morgan v. Las Vegas Sands, Inc., 118 Nev. 315, 321, 43 P.3d 1036, 1040 (2002).

v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320. Generally, however, neither writ will issue when the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. Harvey L. Lerer, Inc. v. District Court, 111 Nev. 1165, 1168, 901 P.2d 643, 645 (1995); see also NRS 34.170 and NRS 34.330. As it appears that a direct appeal from any order dismissing the case below is an adequate remedy at law, extraordinary relief is not warranted. Accordingly, we deny the petition.

It is so ORDERED.<sup>3</sup>

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

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

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

cc: Hon. Dan L. Papez, District Judge  
Jeffrey J. Whitehead  
Nye County District Attorney/Pahrump  
Nye County Clerk

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<sup>3</sup>The petition was not accompanied by the affidavit of the party beneficially interested or the affidavit of the petitioner's attorney. See NRS 15.010(1) and (2), NRS 34.170, NRS 34.330. Further, the petition was not accompanied by all relevant "parts of the record which may be essential to an understanding of the matters set forth in the petition." NRAP 21(a). This presents an independent basis for denying the instant petition.