

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES SHETTER,
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CHURCHILL, AND THE HONORABLE
ROBERT E. ESTES, DISTRICT JUDGE,
Respondents,

and

BETTY ELLEN SHETTER, F/K/A
BETTY ELLEN BECKER,
Real Party in Interest.

No. 49694

FILED

SEP 10 2007

JUANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This is an original petition for a writ of mandamus or prohibition seeking an order from this court directing the district court to enter a judgment declaring the parties' marriage void and to prohibit the district court from conducting a hearing to determine whether petitioner's counsel should be sanctioned.

Petitioner Charles Shetter and real party in interest Betty Ellen Shetter were married in 1967. In 2005, the parties filed a joint petition for separate maintenance, and the district court subsequently entered an order reflecting the parties' separation agreement. Under the separation order, Charles was to pay Betty \$1,000 per month in support for life.

Thereafter, according to Charles, he learned that Betty had allegedly not divorced her first husband, approximately forty-four years ago. Charles consequently filed a motion for a declaratory judgment that his marriage to Betty was void. Betty opposed the motion and insisted that she had obtained a divorce from her first husband in Tijuana, Mexico.

Following a hearing, the district court determined that additional discovery was necessary for its resolution of the matter.

Charles then filed a petition for annulment, or alternatively, a complaint for divorce. Betty filed an answer and a countermotion for divorce. In the interim, Charles filed a motion to stay enforcement of the separation order. On June 8, 2007, the district court entered an order denying Charles' motion for declaratory judgment, his petition for annulment, and the motion for stay. The district court has not resolved the complaint for divorce.

The district court also scheduled a hearing to consider whether Charles' attorney should be sanctioned. Apparently, Charles' attorney advised him to stop paying Betty the \$1,000 monthly support obligation, and to instead place the funds into a trust account pending resolution of Charles' motions and divorce complaint. Charles has filed the present writ petition.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,¹ or to control a manifest abuse or an arbitrary or capricious exercise of discretion.² The counterpart to a writ of mandamus, a writ of prohibition is available when a district court acts without or in excess of its jurisdiction.³ Both mandamus and prohibition are extraordinary

¹NRS 34.160; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

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

³State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320.

remedies, and it is within this court's discretion to determine if a petition will be considered.⁴ Further, neither writ will issue when the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.⁵

With regard to the portion of Charles' petition seeking a writ of mandamus, we have considered this petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted. In particular, it appears that Charles will have an adequate legal remedy in the form of an appeal from the final divorce decree.⁶ Accordingly, we deny mandamus relief.⁷

As for the portion of Charles' petition seeking a writ of prohibition to restrain the district court from conducting a hearing to determine whether Charles' attorney, Martin G. Crowley, should be sanctioned, this request is procedurally unsound. First, Crowley is not a party to the underlying proceedings, nor is he named as a petitioner in this matter.⁸ Next, Charles is not a party beneficially interested in

⁴See Smith, 107 Nev. 674, 677, 818 P.2d 849, 851.

⁵Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004) (recognizing that an appeal is generally an adequate legal remedy); NRS 34.170 (stating that a writ of mandamus may only issue if there is no other adequate and speedy legal remedy); NRS 34.330 (indicating that a writ of prohibition may only issue if there is no adequate and speedy legal remedy).

⁶See NRAP 3A(a).

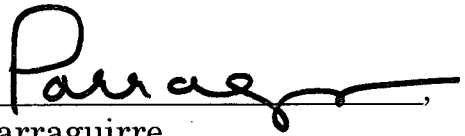
⁷See NRAP 21(b).

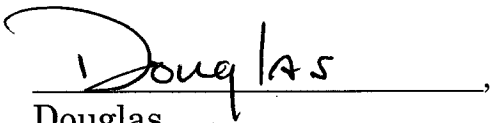
⁸See Albert D. Massi, Ltd. v. Bellmyre, 111 Nev. 1520, 908 P.2d 705 (1995) (noting that non-party attorneys must utilize a writ petition to challenge orders adjudicating fees and costs).

whether Crowley is sanctioned by the district court,⁹ and thus, Charles lacks standing to bring a writ petition on Crowley's behalf.¹⁰ Finally, it is unclear whether a hearing has been conducted to determine whether sanctions should be imposed, and even if sanctions were imposed upon Crowley, he could challenge any sanctions order in an original proceeding in which he is the named petitioner.¹¹ Accordingly, we deny prohibition relief.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁹See NRS 34.170 (noting that a writ will issue only upon application of the persons beneficially interested); NRS 34.330 (same). Generally, a petitioner is “beneficially interested,” when the petitioner has demonstrated “a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted.” Secretary of State v. Nevada State Legislature, 120 Nev. 456, 461, 93 P.3d 746, 749 (2004) (quoting Lindelli v. Town of San Anselmo, 4 Cal. Rptr. 3d 453, 461 (Ct. App. 2003). “Stated differently, the writ must be denied if the petitioner will gain no direct benefit from its issuance and suffer no direct detriment if it is denied.” Secretary of State, 120 Nev. at 461, 93 P.3d at 749 (quoting Waste Management v. County of Alameda, 94 Cal. Rptr. 2d 740, 747 (Ct. App. 2000)).

¹⁰Secretary of State, 120 Nev. at 461, 93 P.3d at 749.

¹¹See Bellmyre, 111 Nev. 1520, 908 P.2d 705.

cc: Hon. Robert E. Estes, District Judge
Martin G. Crowley
Steve E. Evenson
Churchill County Clerk