

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESS ARNDELL CONSTRUCTION CO.,
INC., A NEVADA CORPORATION,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF WASHOE,
AND THE HONORABLE ROBERT H.
PERRY, DISTRICT JUDGE,

Respondents,


and

SUMMIT ENGINEERING
CORPORATION, A NEVADA
CORPORATION,
Real Party in Interest.

No. 49965

FILED

SEP 10 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 district court orders granting a motion to enforce a settlement agreement and denying a motion to reconsider and clarify the court's order enforcing the settlement agreement. Petitioner Jess Arndell Construction Co., Inc., essentially contends that it never assented to terms in the parties' settlement agreement related to the scope of real party in interest Summit Engineering Corp.'s release from liability.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse or an arbitrary or capricious exercise of discretion.¹ We may issue a writ of prohibition to

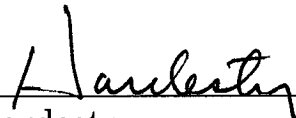
¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

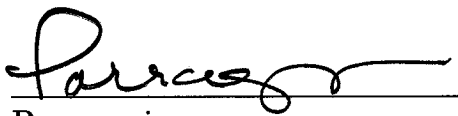
arrest the proceedings of a district court exercising its judicial function, when such proceedings are in excess of the district court's jurisdiction.² Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion.³

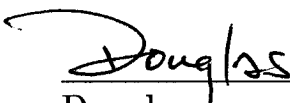
As petitioner, Jess Arndell Construction bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.⁴ Having considered this petition and its supporting documents, we are not persuaded that our intervention by way of extraordinary relief is warranted. Moreover, we note that Jess Arndell Construction may appeal any adverse final judgment or order properly certified as final under NRCP 54(b) in this case.⁵

Accordingly, we

ORDER the petition DENIED.⁶


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

²See NRS 34.320.

³See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁴Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁵See id. at 224, 88 P.3d at 841.

⁶NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

cc: Hon. Robert H. Perry, District Judge
Lee & Russell
Fahrendorf, Vilorina, Oliphant & Oster, LLP
Washoe District Court Clerk