

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOME DEPOT U.S.A., INC.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE TIMOTHY C.
WILLIAMS, DISTRICT JUDGE,
Respondents,
and
JACK DAY,
Real Party in Interest.

No. 50237

FILED

FEB 12 2008

THOMAS K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying summary judgment in a tortious discharge case.

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 Neither writ will issue, however, when the petitioner has

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.

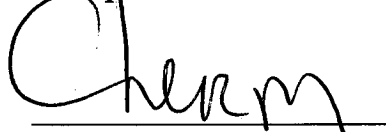
a plain, speedy, and adequate remedy in the ordinary course of law.⁴ Accordingly, we generally will not exercise our discretion to consider petitions for extraordinary writ relief that challenge district court orders denying motions for summary judgment.⁵ The decision to entertain a writ petition is addressed to our sole discretion.⁶

We have considered this petition, the answer thereto, and their respective supporting documents, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted. Accordingly, we

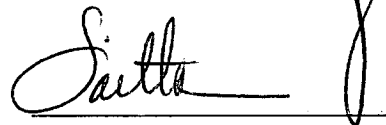
ORDER the petition DENIED.⁷



_____, J.
Maupin



_____, J.
Cherry



_____, J.
Saitta

⁴Gumm v. State, Dep't of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005); NRS 34.170; NRS 34.330.

⁵Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997) (noting that this court may choose to exercise its discretion to consider writ petitions challenging orders denying summary judgment when summary judgment is clearly required by a statute or rule, or when an important issue of law requires clarification).

⁶See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

⁷See Smith, 107 Nev. 674, 818 P.2d 849.

cc: Honorable Timothy C. Williams, District Judge
Payne & Fears LLP
Lewis & Associates, LLC
Eighth District Court Clerk