

IN THE SUPREME COURT OF THE STATE OF NEVADA

FIESTA PALMS, LLC, A NEVADA
LIMITED LIABILITY COMPANY D/B/A
THE PALMS CASINO RESORT,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,
Respondents,

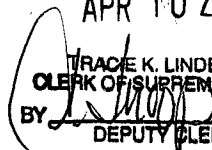
and

BRICE BUEHLER AND MARILYN
BUEHLER,
Real Parties in Interest.

No. 50276

FILED

APR 10 2008

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying petitioner's motion for a jury trial.

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 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 remedies, and it is within this court's discretion to determine if a petition will be considered.⁴

Here, petitioners seek mandamus relief to compel the district court to grant their untimely request for a jury trial. NRCP 39(b) provides that "notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues." In Walton v. District Court,⁵ we held that the propriety of the exercise of judicial discretion in determining whether to grant an untimely motion for a jury trial under NRCP 39(b) is not properly addressed by a petition for

¹See NRS 34.160.

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

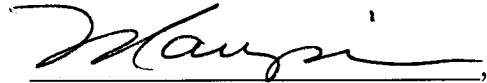
³State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320.

⁴See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

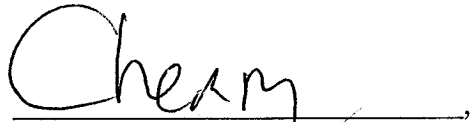
⁵94 Nev. 690, 586 P.2d 309 (1978).

an extraordinary writ. Accordingly, we conclude that our intervention by way of extraordinary relief is not appropriate,⁶ and we,

ORDER the petition DENIED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

cc: Hon. Mark R. Denton, District Judge
Archer Norris
Lemons Grundy & Eisenberg
Edward J. Achrem & Associates
Eighth District Court Clerk

⁶Id. In Walton, despite denying the requested extraordinary relief, this court indicated that the circumstances in that case appeared to present a situation where the discretionary granting of an NRCP 39(b) motion was warranted and effectively encouraged the petitioners to seek further relief from the district court. Id. at 695-96, 586 P.2d at 312. We conclude that the circumstances at issue in the instant case are factually distinguishable from Walton, and thus no such conclusion is warranted in this case.