

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,  
A POLITICAL SUBDIVISION OF THE  
STATE OF NEVADA,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
JENNIFER TOGLIATTI, DISTRICT  
JUDGE,  
Respondents,  
and  
CALLIE PAYNE,  
Real Party in Interest.

No. 50304

**FILED**

DEC 20 2007

JANE TE M. BLOOM  
CLERK OF SUPREME COURT  
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 petitioner's motion to dismiss for failure to bring the matter to trial within five years as required by NRCP 41(e).

Both mandamus and prohibition are extraordinary remedies, and whether a petition for extraordinary relief will be considered is solely within our discretion.<sup>1</sup> Petitioner bears the burden of demonstrating that extraordinary relief is warranted.<sup>2</sup> After reviewing the petition, answer

<sup>1</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

<sup>2</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

and supporting documentation, we conclude that petitioner has not met its burden of demonstrating that our intervention by way of extraordinary relief is warranted.<sup>3</sup>

On October 12, 2007, we entered an order that denied petitioner's motion for an emergency stay and directed real party in interest to file an answer to this petition. In denying the stay, we noted that petitioner had failed to first seek a stay in the district court, had largely failed to address the factors set forth in NRAP 8(c) for consideration in determining whether a stay was warranted, and had not filed a proper motion for a stay and had instead included the request for a in its petition for extraordinary relief. We further indicated that petitioner could renew its stay motion in the district court and, if the motion was denied, file a new motion in this court. It appears that petitioner did not seek to renew its stay motion in the district court until December 6, 2007 and that matter is apparently set for a hearing on January 8, 2007. Real party in interest filed her answer on November 13, 2007. It appears that while petitioner's initial stay request was pending in this court, the district court set the matter for trial in early January 2008.

Generally, a writ may issue only when petitioner has no plain, speedy, and adequate legal remedy,<sup>4</sup> and we have consistently held that an appeal is an adequate legal remedy precluding writ relief.<sup>5</sup> Because

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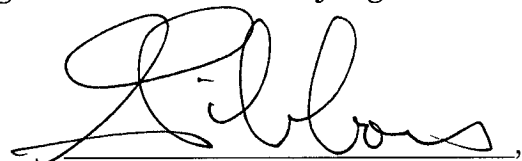
<sup>3</sup>See id.

<sup>4</sup>NRS 34.170; NRS 34.330.

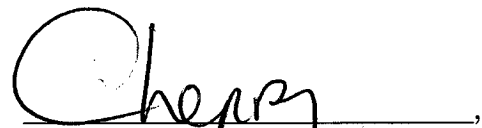
<sup>5</sup>See Pan, 120 Nev. at 224, 88 P.3d at 841.

trial of the underlying case is scheduled to commence at the beginning of January 2008, petitioner has a speedy and adequate remedy available in the form of an appeal from any final judgment entered after trial has concluded. Moreover, although this petition appears to raise an important issue regarding the application of NRCP 41(e), we conclude that petitioner has not met its burden of demonstrating that our intervention by way of extraordinary relief is warranted at this time. Accordingly, we deny the petition.<sup>6</sup> Petitioner, if aggrieved, may raise the issues addressed in this petition in an appeal from a final judgment in the underlying case.

It is so ORDERED.<sup>7</sup>

 J.

Gibbons

 J.

Cherry

 J.

Saitta

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<sup>6</sup>See Smith, 107 Nev. at 677, 818 P.2d at 851

<sup>7</sup>In light of this order, we deny as moot petitioner's motion for leave to file a reply to real party in interest's answer.

cc: Hon. Jennifer Togliatti, District Judge  
Clark County School District Legal Department  
Tingey & Tingey  
Eighth District Court Clerk