

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA J. GIBSON,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
GERALD W. HARDCASTLE, DISTRICT
JUDGE, FAMILY COURT DIVISION,

Respondents,

and

THOMAS JUDE GIBSON,
Real Party in Interest.

No. 50530

FILED

NOV 20 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Carroll*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order setting a matter for trial and the district court's alleged refusal to continue the 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 Mandamus is an

¹See NRS 34.160.

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

extraordinary remedy, and it is within our discretion to determine if a petition will be considered.³ The petitioner has the burden of demonstrating that our intervention by way of extraordinary relief is warranted.⁴ Generally, a writ may issue only when petitioner has no plain, speedy, and adequate legal remedy.⁵

In this case, the district court's August 29, 2007 order setting the matter for trial stated that any requests for a continuance should be made in writing. Petitioner, in her motion for a stay, acknowledges that she never filed a written request to continue the trial. She asserts that this failure resulted from the illness of one of petitioner's attorneys, the lack of timely notice of the scheduling order, and the shortened period of time. The stay motion implies that petitioner was not aware of the trial date until her co-counsel received a copy of the September 28, 2007 order regarding an August 28 hearing, at which the case was apparently set for trial and various other procedural matters were addressed. Notice of entry of that order was served on petitioner's co-counsel on September 24, 2007. In her petition, however, petitioner asserts that once co-counsel learned of the August 28 hearing, she obtained a copy of the trial court

³See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

⁴See Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); NRAP 21(a).

⁵NRS 34.170.

minutes and filed a motion to “clarify the trial setting.” Petitioner has failed to provide this court with a copy of her motion to clarify the trial setting and her petition does not discuss what issues were addressed in that motion. If, as petitioner asserts, no separate written request to continue the trial was made, it is not clear why such a request was not included as part of the motion to clarify. Petitioner has not provided this court with a copy of the minutes for the August 28 hearing, which she asserts were “unclear,” necessitating the motion for clarification, nor has she provided this court with a copy of any written order denying her request for continuance, a transcript of the hearing at which her request for a continuance was purportedly denied, or a copy of the district court minutes from that hearing.

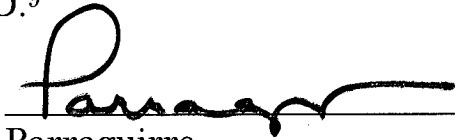
Because of petitioner’s failure to provide documentation necessary for this court’s review of the issues raised in this petition, this court is unable to fully evaluate the merits of the petition.⁶ Petitioner has therefore failed to meet her NRAP 21(a) burden of demonstrating that this court’s intervention by way of extraordinary relief is warranted.⁷ Additionally, petitioner should seek, in writing, appropriate relief from the

⁶Id. at 228, 88 P.3d at 844; NRAP 21(a) (stating that “[t]he petition shall contain . . . copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition”).

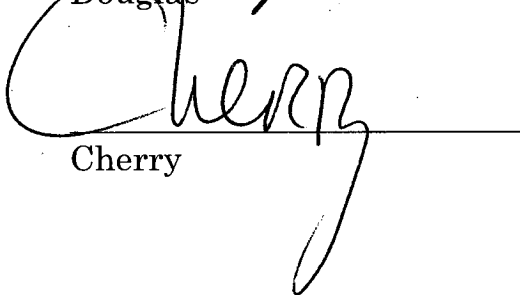
⁷See Pan, 120 Nev. at 228, 88 P.3d at 844.

district court in the first instance. Accordingly, we conclude that our intervention by way of extraordinary relief is not warranted,⁸ and we

ORDER the petition DENIED.⁹


Parraguirre J.


Douglas J.


Cherry J.

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Robin J. Barber
Gary E. Gowen
Gibson & Kuehn
Eighth District Court Clerk

⁸See NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851 (1991).

⁹In light of this order, we deny as moot petitioner's request for a stay. Additionally, we conclude that petitioner has shown good cause to waive the filing fee. Accordingly, no filing fee is due.