

IN THE SUPREME COURT OF THE STATE OF NEVADA

GABRIEL GARCIA,  
Appellant,  
vs.  
MELINDA GARCIA,  
Respondent.

No. 50792

**FILED**

JAN 09 2008

ORDER DISMISSING APPEAL

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

Gabriel Garcia filed in the district court a “Notice of Appeal and/or Petition for Extraordinary Writ,” challenging district court minutes denying a peremptory challenge. The matter was docketed as an appeal in this court on December 28, 2007. Mr. Garcia requests that “his notice of appeal is treated interchangeably as either an appeal or a Petition for a Writ.”

NRAP 21(a) requires that an application to this court for extraordinary relief “be made by filing a petition therefor *with the clerk of the Supreme Court*” (emphasis added). As noted above, the document Mr. Garcia filed to initiate this matter was filed in the district court, rather than in this court. This court will not consider an application for an extraordinary writ that has not been filed in this court in the first instance.<sup>1</sup> Accordingly, we decline to treat Mr. Garcia’s notice as a petition for an extraordinary writ.<sup>2</sup> This is without prejudice to Mr.

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<sup>1</sup>See NRAP 21(e).

<sup>2</sup>We note that the document filed by Mr. Garcia was not accompanied by an affidavit of the party beneficially interested. See NRS 34.170, 34.300; see also NRS 15.010. Even if a petition for extraordinary relief is properly filed in this court in the first instance, the failure to include the proper affidavit presents a basis for denying such a petition.

Garcia's right to file a proper petition for extraordinary relief in this court.<sup>3</sup>

Additionally, our review of the documents submitted to this court pursuant to NRAP 3(e) reveals we have no appellate jurisdiction over this matter. Specifically, the minute order identified in the notice of appeal is not appealable.<sup>4</sup> Neither an oral pronouncement from the bench nor a minute order is appealable.<sup>5</sup> Further, this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.<sup>6</sup> No statute or court rule authorizes an appeal from an order denying a peremptory challenge.<sup>7</sup> Thus, even if the district court had entered a

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<sup>3</sup>In the event Mr. Garcia intends to file such a petition, we remind him that “[p]etitioners carry the burden of demonstrating that extraordinary relief is warranted.” Pan v. District Court, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Therefore, any petition for extraordinary relief should strictly comply with the requirement of NRAP 21.

<sup>4</sup>See NRAP 3A(b).


<sup>5</sup>Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (explaining that “[t]he district court’s oral pronouncement from the bench, the clerk’s minute order, and even an unfiled written order are ineffective for any purpose and cannot be appealed”).

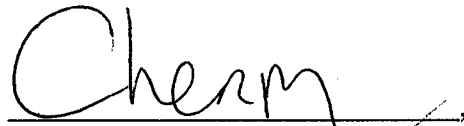
<sup>6</sup>Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

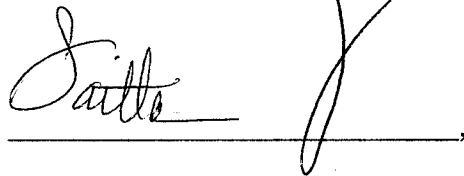
<sup>7</sup>See Turnipseed v. Truckee-Carson Irr. Dist., 116 Nev. 1024, 1029, 13 P.3d 395, 398 (2000) (“[e]xtraordinary relief is the appropriate remedy when the district court improperly grants or fails to grant a peremptory challenge”).

written order denying the peremptory challenge, this court would lack jurisdiction to consider an appeal from such an order. Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.

 \_\_\_\_\_, C.J.

 \_\_\_\_\_, J.

 \_\_\_\_\_, J.

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division  
Law Offices of Tony Liker  
Kelleher & Kelleher, LLC  
Eighth District Court Clerk