

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNEST A. BECKER, JR., AND  
KATHLEEN BECKER, HUSBAND AND  
WIFE AS JOINT TENANTS,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
VALORIE J. VEGA, DISTRICT JUDGE,  
Respondents,  
and  
NEVADA POWER COMPANY,  
Real Party in Interest.

No. 50868

**FILED**

FEB 08 2008

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:  DEPUTY CLERK

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges (1) a district court order that granted a motion for immediate occupancy in a condemnation action and (2) a district court order that denied reconsideration of the immediate occupancy order.

According to petitioners Ernest A. Becker, Jr., and Kathleen Becker, real party in interest Nevada Power Company instituted the underlying condemnation action to obtain an easement over a portion of their property. Nevada Power is seeking the easement, the Beckers assert, to run high-voltage power lines over the land. In conjunction with its complaint, Nevada Power filed a motion for immediate occupancy, under NRS 37.100, requesting to immediately occupy the Beckers' land to construct and operate high-voltage power lines over the proposed easement, pending the district court's resolution of the complaint.

The district court ultimately granted Nevada Power's motion, permitting Nevada Power to immediately occupy the Beckers' land. Thereafter, the Beckers moved the district court to dismiss the complaint, contending that Nevada Power's motion for immediate occupancy failed to make the showing that NRS 37.050 required. The district court apparently construed the Beckers' motion to dismiss as a motion for reconsideration and denied the motion. This petition followed.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse or an arbitrary or capricious exercise of discretion.<sup>1</sup> The writ of mandamus's counterpart, a writ of prohibition, arrests the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.<sup>2</sup> But both prohibition and mandamus are extraordinary remedies, and whether a petition will be considered is within our sole discretion.<sup>3</sup> As petitioners, the Beckers bear the burden to demonstrate that our intervention by way of extraordinary relief is warranted.<sup>4</sup>

After reviewing this petition and its supporting documents, we are not persuaded that our intervention by way of extraordinary relief is

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<sup>1</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


<sup>2</sup>See NRS 34.320.

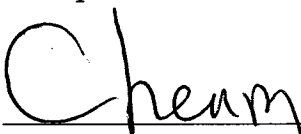
<sup>3</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

<sup>4</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

warranted.<sup>5</sup> In particular, we cannot conclude based on the petition that the district court manifestly abused its discretion or exceeded its jurisdiction.<sup>6</sup> Accordingly, we

ORDER the petition DENIED.<sup>7</sup>

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

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

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

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<sup>5</sup>With respect to the district court's order construing the Beckers' motion to dismiss as one for reconsideration and denying the motion, even if we considered that order as one denying a motion to dismiss, the Beckers have not persuaded us that our extraordinary intervention is warranted. Specifically, the Beckers have not demonstrated that this matter fits firmly within any exception to our general policy to decline considering petitions challenging district court orders denying motions to dismiss. See Smith v. District Court, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997).

<sup>6</sup>NRS 34.320; Round Hill Gen. Imp. Dist., 97 Nev. 601, 637 P.2d 534.

<sup>7</sup>NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

In light of this order, we deny as moot the Beckers' request for a stay.

cc: Hon. Valorie Vega, District Judge  
Law Offices of John M. Netzorg  
Law Offices of Michael G. Chapman  
Rebecca A. Risse  
Eighth District Court Clerk