

IN THE SUPREME COURT OF THE STATE OF NEVADA

MESAGATE HOMEOWNERS'
ASSOCIATION, AN
UNINCORPORATED ASSOCIATION;
DAVID C. MATHEWSON; SANDRA K.
MATHEWSON; SHIRLEY G. FRASER;
JACK R. KNOWLES; AND MARY
KNOWLES,
Petitioners,

vs.

THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF LYON,
AND THE HONORABLE ROBERT E.
ESTES, DISTRICT JUDGE,

and

Respondents,
THE CITY OF FERNLEY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA AND RANDY A. RUDY,
BUILDING OFFICIAL FOR THE CITY
OF FERNLEY,
Real Parties in Interest.

No. 50869

FILED

JAN 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges the district court's oral decision to deny petitioners writ relief regarding a building permit issued in connection with a construction project in Fernley, Nevada.

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 or an arbitrary or capricious exercise 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 Although the decision to entertain a petition for a writ of mandamus or prohibition is addressed to our sole discretion,⁴ we have explained that neither writ will issue when petitioners have a plain, speedy, and adequate remedy in the ordinary course of law.⁵ Usually, an appeal is an adequate and speedy legal remedy precluding writ relief.⁶

Here, petitioners challenge the district court's oral pronouncement denying their writ petition. It appears that petitioners can appeal from the district court's written decision once it is entered,⁷ however, and thus that petitioners have an available legal remedy precluding writ relief. Although petitioners assert that an appeal would

¹NRS 34.160; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

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

³NRS 34.320; see also Smith, 107 Nev. 674, 818 P.2d 849.

⁴Id.

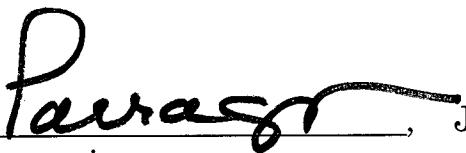
⁵Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004); NRS 34.170; NRS 34.330.

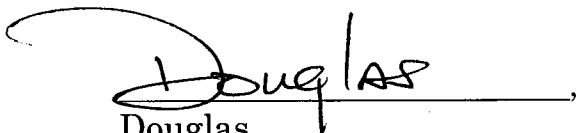
⁶See, e.g., Pan, 120 Nev. at 224, 88 P.3d at 841.

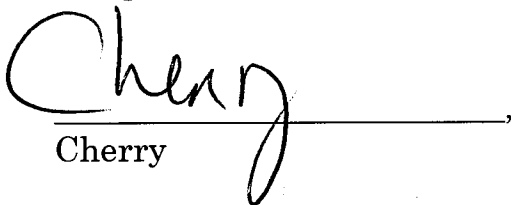
⁷NRS 2.090(2); NRAP 3A(b)(1); City of N. Las Vegas v. Dist. Ct., 122 Nev. ___, ___, 147 P.3d 1109, 1114 (2006) (explaining that orders resolving petitions for writ relief are appealable when they finally resolve the matter before the district court).

not be adequate and speedy, given that construction apparently has started and the time constraints that they are under, we note that petitioners may seek to enjoin the construction pending appeal and/or our expedited review of the matter.⁸ And as we are confident that the district court will promptly enter a written decision in this matter, we conclude that petitioners' opportunity to appeal from the district court's written order once it is entered constitutes an adequate and speedy legal remedy precluding writ relief. Accordingly, we

ORDER the petition DENIED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Robert E. Estes, District Judge
Thomas J. Hall
Taggart & Taggart, Ltd.

⁸See NRAP 8 (requiring, generally, that parties first apply to the district court for a stay or an injunction pending appeal).