

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARAGON COMMERCIAL REAL
ESTATE, LLC,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND, THE HONORABLE
WILLIAM S. POTTER, DISTRICT
JUDGE,

Respondents,
and

RICHARD B. GREEN,
Real Party in Interest.

No. 51058

FILED

MAR 07 2008

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

ORDER DENYING PETITION FOR WRITS OF
PROHIBITION AND MANDAMUS

This original petition for writs of prohibition and mandamus challenges a purported district court order denying motions to continue trial and to stay the district court proceedings, and granting motions for a protective order related to discovery matters.

In particular, petitioner seeks writs of mandamus and prohibition directing the district court to (1) continue the presently scheduled March 10, 2008 trial date, (2) refrain from considering any motion as to who owns Paragon Commercial Real Estate, LLC, until after petitioner's appeal from an order denying its motion for a preliminary injunction is resolved in this court,¹ (3) accept, following resolution of

¹See Paragon Commercial Real Estate v. Green, Docket No. 50986.

petitioner's appeal, jurisdiction over the federal law claims raised in petitioner's third party complaint, and (4) vacate its protective order, which prevents petitioner from deposing certain persons. Petitioner's request for this relief is based on its arguments that the district court currently lacks jurisdiction over the matter due to the pending appeal, and that once the appeal is resolved, the district court must exercise jurisdiction over the federal law claims.

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, or to control a manifest abuse of discretion.² In contrast, a writ of prohibition is available when a district court acts without or in excess of its jurisdiction.³ Generally, neither mandamus nor prohibition will issue when the petitioner has a plain, speedy, and adequate remedy at law, such as an appeal.⁴ Because mandamus and prohibition are extraordinary remedies, whether a petition will be considered is entirely within our discretion.⁵ Petitioner bears the burden of demonstrating that our intervention is warranted.⁶

²NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

³State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320.

⁴NRS 34.170; NRS 34.330; see Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

⁵Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁶Pan, 120 Nev. at 228, 88 P.3d at 844.

Having considered this petition and its supporting documents, we are not satisfied that our intervention by way of extraordinary relief is warranted.⁷ According to petitioner, the district court was required to continue the trial date and stay the divorce action pending our resolution of its appeal from the district court's interlocutory order denying its motion for a preliminary injunction because the pending appeal divests the district court of jurisdiction over any non-collateral matter in the case.⁸ Petitioner also maintains that, since the district court lacked jurisdiction, it improperly ruled on motions after the notice of appeal was filed.⁹

⁷Although petitioner indicated that it would supplement its petition with a transcript of the hearing in which the district court purportedly decided petitioner's motions for a continuance and for a stay, at this time, petitioner has not supplemented its petition with any transcripts or written order. See State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004) (explaining that non-administrative court orders that deal with the procedural posture or merits of a case, "must be written, signed, and filed before they become effective."); Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (setting forth the general proposition that a court's oral pronouncement from the bench is "ineffective for any purpose"); see also NRAP 21(a) (explaining petitioner's burden to provide the documents necessary for this court to review the matters set forth in the petition).

⁸See Mack-Manley v. Manley, 122 Nev. 849, 138 P.3d 525 (2006).

⁹To the extent that petitioner requests that we review the merits of the protective order, that request is denied. See Schlatter v. District Court, 93 Nev. 189, 561 P.2d 1342 (1977) (noting that this court generally declines to exercise its discretion to review, through petitions for extraordinary relief, alleged errors in discovery).

An appeal from an interlocutory order, however, divests the district court of jurisdiction only as to matters concerning the appealed order.¹⁰ Thus, while an appeal from an interlocutory order is pending, the district court retains jurisdiction to consider the remainder of the case.¹¹ Accordingly, in this case, a stay of proceedings was not obligatory, as the district court retained jurisdiction to consider motions related to the remainder of the case and to conduct the trial.¹²

¹⁰See, e.g., Bongiovi v. Bongiovi, 94 Nev. 321, 579 P.2d 1246 (1978); cf. Rust, 103 Nev. 686, 747 P.2d 1382 (explaining that generally a timely notice of appeal divests the district court of jurisdiction and vests jurisdiction in this court).

¹¹See generally Ex parte National Enameling, 201 U.S. 156, 161 (1906).

¹²We are not persuaded by petitioner's argument that the issues raised in the divorce and the issues raised in its appeal are "so intertwined" as to divest the district court of jurisdiction over the divorce issues. Whether petitioner demonstrated irreparable injury and a likelihood of success on the merits so as to warrant an injunction to preserve the status quo is usually different than resolving the merits of a case themselves. See Magnolia Petroleum Co. v. Blankenship, 70 S.W.2d 258, 259 (Tex. Civ. App. 1934) (explaining that although the trial court could not change or set aside its order granting a temporary injunction after that order was appealed in the appellate court, it could nevertheless hear the remainder of the case on its merits, despite the pending appeal).

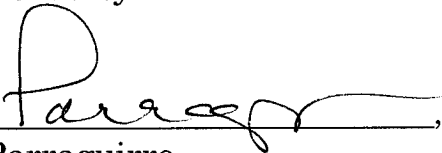
Here, there is no indication that the district court resolved any merits of the case in denying the preliminary injunction, and petitioner did not include a copy of the divorce complaint, any responsive pleadings, or any orders that have been entered in the divorce proceeding. See NRAP 21(a); Pan, 120 Nev. at 228, 88 P.3d at 844 (emphasizing a petitioner's NRAP 21(a) duties). Thus, we cannot conclude that the issues raised in the divorce are so tied to the preliminary injunction issue that our consideration of the appeal from the preliminary injunction divests the

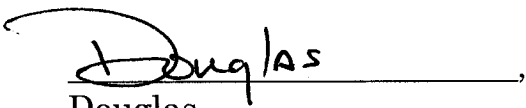
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As noted above, petitioner also asks this court to issue an extraordinary writ directing the district court to exercise its jurisdiction over the federal law claims. Since petitioner may raise any issues concerning the federal law claims in the context of an appeal from the final judgment, we conclude that our intervention is not warranted here.¹³ Accordingly, we

ORDER the petition DENIED.¹⁴


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. William S. Potter, District Judge, Family Court Division
Lewis Brisbois Bisgaard & Smith, LLP
Bruce I. Shapiro, Ltd.
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Eighth District Court Clerk

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district court of jurisdiction to hear and decide the issues concerning the divorce. See Mack-Manley, 122 Nev. at 855, 138 P.3d at 529-30.

¹³Pan, 120 Nev. at 224, 88 P.3d at 841. We also note that petitioner concededly raised the same federal law claims in the pending U.S. District Court action.

¹⁴Smith, 107 Nev. at 677, 818 P.2d at 851.