

IN THE SUPREME COURT OF THE STATE OF NEVADA

BONNIE MENDOZA,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE N.
ANTHONY DEL VECCHIO, DISTRICT
JUDGE, FAMILY COURT DIVISION,

Respondents,

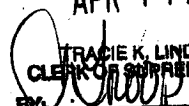
and

LOUIS MENDOZA,
Real Party in Interest.

No. 51240

FILED

APR 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT
OF PROHIBITION OR MANDAMUS

This original petition for a writ of prohibition or, alternatively, mandamus purports to challenge a district court order denying petitioner's request to enforce the parties' alleged proposed marital settlement agreement.

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.¹ In contrast, a writ of

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

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

After considering the petition, we are not satisfied that our intervention by way of extraordinary relief is warranted, as petitioner did not include any supporting documents with her petition and thus has failed to meet her NRAP 21(a) burden.⁶ Because of the lack of supporting documentation, we are unable to evaluate the petition on its merits. Accordingly, we

²State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320.

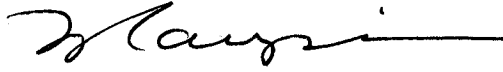
³NRS 34.170; NRS 34.330; see Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

⁴Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

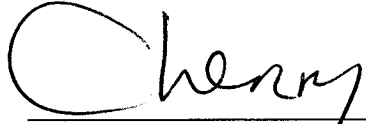
⁵NRAP 21(a); Pan, 120 Nev. at 228, 88 P.3d at 844.

⁶See 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”); Pan., 120 Nev. at 228-29, 88 P.3d at 844 (noting that, under NRAP 21(a), a petitioner has the burden of demonstrating that this court’s intervention by way of extraordinary relief is warranted).

ORDER the petition DENIED.⁷


_____, J.

Maupin


_____, J.

Cherry


_____, J.

Saitta

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Lubritz Law Group
Louis Mendoza
Eighth District Court Clerk

⁷See NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851.

In addition to the substantive defects with petitioner's writ petition, there are procedural deficiencies with the petition that constitute independent bases for denying this petition. In particular, it appears that petitioner improperly served the petition directly on real party in interest, even though it also appears that real party in interest is represented by counsel in the district court, as the petition explains that the parties engaged in mediation, with "counsel present." See NRAP 25(b) (requiring service on counsel when a party is represented by counsel). Petitioner also failed to file with her petition, and serve on respondent and real party in interest, an affidavit supporting her application for extraordinary writ relief. See NRS 34.170 (mandamus) and NRS 34.330 (prohibition) (explaining that extraordinary writs issue "upon affidavit, on the application of the person beneficially interested").