

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD L. MILSNER,  
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE, AND THE HONORABLE  
BRENT T. ADAMS, DISTRICT JUDGE,  
Respondents,

and

JOHN CARSTARPHEN,  
Real Party in Interest.

No. 51498

**FILED**

APR 28 2008

TRACIE 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 the district court's failure thus far to rule on petitioner's motion to dismiss the underlying case pursuant to NRCP 41(e).

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.<sup>1</sup> We may issue a writ

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<sup>1</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

of prohibition to arrest 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> Both mandamus and prohibition are extraordinary remedies, and whether a petition for extraordinary relief will be considered is solely within our discretion.<sup>3</sup> Further, a writ of mandamus or prohibition may issue only when there is no plain, speedy, and adequate legal remedy.<sup>4</sup>

In this petition, petitioner seeks to compel the district court to dismiss the underlying action based on the expiration of the NRCP 41(e) five-year period. Petitioner acknowledges, however, that the district court has not yet ruled on his motion to dismiss, which was filed on March 5, 2008. Trial is currently scheduled to begin on May 12, 2008. Because the district court has not yet ruled on petitioner's motion, we conclude that our intervention by way of extraordinary relief is not warranted.<sup>5</sup> Although petitioner asserts that, by failing to rule on his motion "on this late date, the [d]istrict [c]ourt has made clear that it intends to proceed

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


<sup>3</sup>See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

<sup>4</sup>See NRS 34.170 and 34.330.

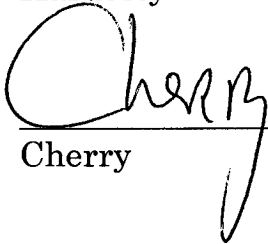
<sup>5</sup>See Smith, 107 Nev. 674, 818 P.2d 849.

with trial,” we are confident that the district court will resolve petitioner’s motion prior to the start of trial. Accordingly, we,

ORDER the petition DENIED.<sup>6</sup>

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

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

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

cc: Hon. Brent T. Adams, District Judge  
Richard G. Hill  
King & Russo, Ltd.  
Washoe District Court Clerk

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<sup>6</sup>Petitioner also seeks the issuance of a “temporary emergency writ of prohibition” preventing the district court from proceeding with trial in the underlying case until this petition is resolved. We note that such relief should properly be sought by way of a motion for stay in the district court. NRAP 8. In light of this order, however, we deny as moot petitioner’s request for a “temporary emergency writ of prohibition.” Also, in light of this order, petitioner need not file the affidavit as directed in our April 25, 2008 notice of procedural deficiency.