

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANNON GASSER,
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

GENERAL MOTORS ACCEPTANCE
CORPORATION,

Real Party in Interest.

No. 51881

FILED

JUL 10 2008

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order affirming a justice court decision.

Real party in interest filed suit against petitioner in June of 1999. A default judgment was subsequently entered against petitioner on April 17, 2000. According to petitioner, nothing further occurred in the underlying case until 2007, when petitioner moved to set aside the default judgment. Petitioner's motion was granted on April 6, 2007. Thereafter, petitioner sought to dismiss the case pursuant to JCRCP 41(e), a request that was denied on May 22, 2007. Real party in interest then moved for summary judgment against petitioner, and that motion was granted on October 30, 2007. Petitioner appealed the judgment to the district court

and the district court affirmed the justice court's decision. This petition followed.

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 Mandamus is an extraordinary remedy, however, and whether a petition for extraordinary relief will be considered is solely within our discretion.²

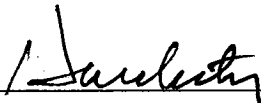
Here, petitioner asserts that the district court should have reversed the judgment against her based on her contention that, under JCRCF 41(e), the justice court was obligated to dismiss the action pending against her. We disagree. In particular, real party in interest effectively brought its case to trial by obtaining a default judgment against petitioner well before the expiration of JCRCF 41(e)'s five-year period.³ Once the default judgment was set aside, the action was promptly resolved by a grant of summary judgment against petitioner. Accordingly, we conclude that the district court properly affirmed the decision of the justice court, and we

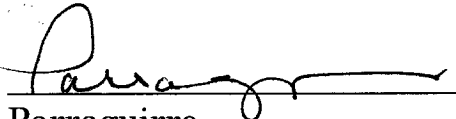
¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

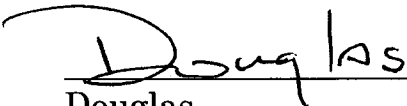
²See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

³Cf. United Ass'n of Journeymen v. Manson, 105 Nev. 816, 783 P.2d 955 (1989) (holding that when a district court grants a motion for summary judgment submitted before NRCP 41(e) five-year period expires, the case has been brought to trial for the purposes of NRCP 41(e)).

ORDER the petition DENIED.⁴


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Galloway & Jensen
Robert H. Broili
Washoe District Court Clerk

⁴NRAP 21(b); Smith 107 Nev. 674, 818 P.2d 849.