

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, NEVADA,
Appellant,
vs.
STEPHEN R. SHORTELL,
Respondent.

No. 51892

FILED

MAY 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant City of Las Vegas' petition for a writ of mandamus. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

The City charged respondent Stephen R. Shortell with driving under the influence of alcohol and disregarding a red traffic signal. Prior to his trial in the municipal court, Shortell opposed the use of the affidavit of the health care professional who drew a sample of his blood for testing and requested her presence to answer specific questions that he claimed only she could answer. The municipal court heard argument on the request, found that Shortell had raised a bona fide dispute regarding the facts in the health care professional's affidavit, and ordered the State to compel the health care professional's presence at trial for cross-examination.

The City filed a petition for a writ of mandamus in the district court.¹ Shortell filed an answer. After considering the parties' written briefs and oral arguments, the district court denied the petition. On appeal to this court, the City contends that the district court abused its discretion by refusing to issue a writ of mandamus directing the municipal court to comply with the provisions of NRS 50.315.

"[A] writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion." Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1337 (1989) (internal citation omitted). A writ of mandamus will not issue when the petitioner has "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170. A writ of mandamus is an extraordinary remedy and therefore a court's decision to entertain a petition for a writ of mandamus is discretionary. Hickey, 105 Nev. at 731, 782 P.2d at 1338. As a general rule, we review a district court's decision to grant or deny a

¹The record on appeal does not include a copy of the City's petition for a writ of mandamus. Nonetheless, we conclude that the petition is not essential for our resolution of the issue presented for review. See generally NRAP 3C(e)(2); NRAP 30(b). We remind appellant that it is "appellant's responsibility to provide the materials necessary for this court's review of the appeal." See Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975).

writ petition under an abuse of discretion standard. Koller v. State, 122 Nev. 223, 226, 130 P.3d 653, 655 (2006).

NRS 50.315(6) provides in relevant part,

If, at or before the time of trial, the defendant establishes that:

(a) There is a substantial and bona fide dispute regarding the facts in the affidavit or declaration; and

(b) It is in the best interests of justice that the witness who signed the affidavit or declaration be cross-examined, the court may order the prosecution to produce the witness

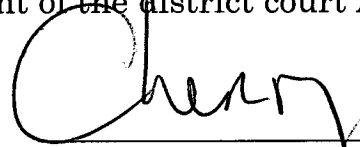
Our review of the record on appeal reveals that the district court found that,

The Municipal Court Judge determined that Respondent met the statutory requirements of NRS 50.315(6) for requiring the presence of the Health Care Professional at trial based upon Respondent's statements to the Municipal Court the Respondent had standard questions he wanted to ask the Health Care Professional regarding the procedure used to withdraw the Respondent's blood sample and the names of the persons who may have witnessed this blood draw.


The district court determined that the existence of a bona fide dispute is an issue of fact, the municipal court is the trier of fact in this case, and it is the municipal court's "decision based upon how [it] reads the evidence to determine whether or not the requirements of 50.315 are met." The district court concluded that the municipal court did not abuse its discretion and denied the petition. Under these circumstances, we

conclude that the City has not demonstrated that the district court abused its discretion by denying the petition, and we


ORDER the judgment of the district court AFFIRMED.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

cc: Hon. David B. Barker, District Judge
Las Vegas City Attorney
Garrett T. Ogata
Eighth District Court Clerk