

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANGELO DRAKE,
Appellant,

No. 51908

vs.

THE HONORABLE CAROL A. NELSON,
JUSTICE OF THE PEACE, AND
PATRICIA REEVES, DEPUTY CLERK,
Respondents.

FERRILL JOSEPH VOLPICELLI,
Appellant,

No. 51938

vs.

THE JUSTICE COURT OF LAKE
TOWNSHIP, IN AND FOR THE
COUNTY OF PERSHING; THE
HONORABLE CAROL A. NELSON,
JUSTICE OF THE PEACE; NEVADA
DEPARTMENT OF CORRECTIONS;
GLEN WHORTON, DIRECTOR; VICKI
RADFORD; AND WARDEN, LOVELOCK
CORRECTIONAL CENTER, JACK
PALMER,
Respondents.

FILED

APR 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingersoll*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

These are consolidated proper person appeals from district court orders that denied petitions for writs of mandamus directing the justice court to allow appellants to proceed in forma pauperis on appeal to the district court. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

This court reviews district court decisions to grant or deny petitions for a writ of mandamus for an abuse of discretion. DR Partners

v. Bd. of County Comm'rs, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000). A writ of mandamus is generally available to compel the performance of a legal duty, NRS 34.160, or to control a manifest abuse of discretion. Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Mandamus is an extraordinary remedy, and the decision as to whether a petition will be entertained lies within the court's discretion. Kussman v. District Court, 96 Nev. 544, 545, 612 P.2d 679, 679 (1980).

Having reviewed the record, appellants' civil proper person appeal statements, and respondents' response, we conclude that the district court abused its discretion in denying appellants mandamus relief. Under the Justice Court Rules of Civil Procedure, the justice court may allow parties to proceed in forma pauperis on appeal. See JCRP 74B(a)(1) (implicitly allowing the justice court to waive an indigent party's fees on appeal). There is nothing in the record to indicate that the justice court understood that it had the discretion to grant appellants' requests to proceed in forma pauperis on appeal, however. Accordingly, as it appears that the justice court failed to comply with its legal duty to consider the merits of appellants' in forma pauperis requests under JCRP 74B(a)(1), the district courts improperly denied appellants' petitions for mandamus relief, and we

ORDER the judgments of the district courts REVERSED AND REMAND these matters to the district courts to grant the petitions and

issue writs of mandamus directing the justice court to consider the merits of appellants' in forma pauperis motions.¹

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Richard Wagner, District Judge
Sixth Judicial District Court Dept. 2, District Judge
Michael Angelo Drake
Ferrill Joseph Volpicelli
Attorney General/Carson City
Pershing County Clerk

¹In light of this order, we need not consider whether the district court manifestly abused its discretion in denying Volpicelli's petition for writ of prohibition.