

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERMES CABALLERO,
Petitioner,


vs.

THE SEVENTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WHITE
PINE, AND THE HONORABLE DAN L.
PAPEZ, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 52280

FILED

SEP 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original proper person petition for a writ of mandamus challenges a district court order affirming a justice court judgment in a small claims action.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.¹ Mandamus is an extraordinary remedy, and whether a petition will be considered is within our sole discretion.² Also, petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.³

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

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

³Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Petitioner first claims that the justice court erred in permitting a Nevada Department of Corrections employee to serve as interpreter when the Department was a defendant in petitioner's small claims action. On appeal, the district court noted that the justice court decision in this regard was "troublesome," but that it was subject to a harmless error analysis. On that basis, since petitioner did not allege any mistranslation by the Department employee, the district court determined that any error was harmless. We agree with the district court's conclusion: while permitting a defendant's employee to serve as an interpreter is not appropriate in light of the conflict of interest,⁴ petitioner does not allege any defect in the employee's translation of the hearing or articulate any prejudice.⁵ Accordingly, extraordinary relief is not warranted on this basis.

Petitioner next asserts that the justice court should have awarded damages based on the values set forth in his Inmate Personal Property Claim Form, in which he stated the lost property's value to be \$6,101. But at the justice court hearing, petitioner presented evidence that he lost photos, addresses, and legal work, with no evidence of these

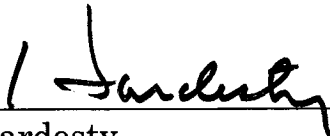
⁴See Nevada Certified Court Interpreter Program Code of Professional Responsibility Canon 3 (impartiality and avoidance of conflict of interest) and commentary (noting that a presumed conflict is present when an interpreter is an associate of a party), available at <http://www.nvsupremecourt.us/documents/index.php?entityID=3> (follow "Code of Professional Responsibility for Interpreters in Nevada" hyperlink).

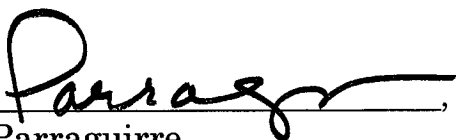
⁵JCRCP 61; Pandelis Constr. Co. v. Jones-Viking Assoc., 103 Nev. 129, 734 P.2d 1236 (1987) (holding that without prejudice, error did not require reversal).

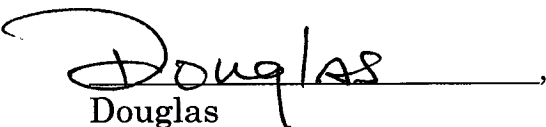
items' value. As the district court properly held, a plaintiff who establishes a right to damages but not their amount is entitled only to nominal damages.⁶ Here, petitioner was awarded nominal damages of \$100, and we perceive no basis for extraordinary intervention.

Accordingly, we

ORDER the petition DENIED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Dan L. Papez, District Judge
Hermes Caballero
Attorney General Catherine Cortez Masto/Carson City
White Pine County District Attorney
White Pine County Clerk

⁶Commercial Cabinet Co. v. Wallin, 103 Nev. 238, 737 P.2d 515 (1987).

⁷See NRAP 21(b); Smith v. District Court, 107 Nev. at 677, 818 P.2d at 851 (1991). We grant petitioner's motion for in forma pauperis status; accordingly, no filing fee is due. See NRAP 21(e).