

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARGARET JONES,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JAMES M. BIXLER, DISTRICT JUDGE,
Respondents,
and
LIZ THOMPSON,
Real Party in Interest.

No. 52439

FILED

NOV 19 2008

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

ORDER GRANTING PETITION FOR A WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court order scheduling an evidentiary hearing in an appeal from a justice court's summary eviction order. On September 19, 2008, this court entered an order directing an answer and staying the district court proceedings. Real party in interest Liz Thompson has timely filed her answer.

Petitioner Margaret Jones contends that under NRCPC 76A, the district court is without authority to conduct an evidentiary hearing in an appeal from a justice court's order. In her answer, Thompson concedes that the district court has no authority to conduct an evidentiary hearing in the appeal below.

A writ of prohibition is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.¹ A writ of prohibition is an

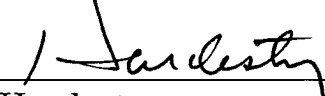
¹See NRS 34.320.

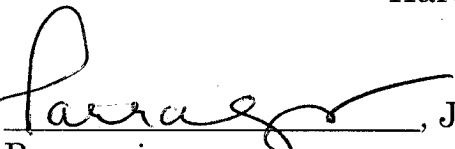
extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered.²

Having considered the documents provided in this case, we conclude that the district court exceeded its jurisdiction in ordering that an evidentiary hearing be held. JCRCP 76A authorizes a district court to “review all orders affecting the judgment appealed from,” to set aside, confirm, or modify any proceedings subsequent to and dependent on the judgment, and to order a new trial. Nothing in that rule, however, authorizes the district court to conduct an evidentiary hearing. In fact, JCRCP 76A specifically provides that justice court cases appealed to the district court “must not be tried anew.”

Accordingly, we grant the petition. The clerk of this court shall issue a writ of prohibition directing the district court to vacate its scheduling order and prohibiting the district court from conducting any evidentiary hearings in the underlying appeal from the justice court’s summary eviction order.³

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

²See, e.g., Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

³In light of our disposition of this petition, we vacate our stay order entered on September 19, 2008. We also deny Thompson’s request, made in her answer, that this court prohibit the district court from remanding the case to the justice court for a new trial.

cc: Hon. James M. Bixler, District Court
Nevada Legal Services/Las Vegas
Edward D. Kania
Eighth District Court Clerk