

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY LYNN DAVIS,
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF LYON,
AND THE HONORABLE DAVID A.
HUFF, DISTRICT JUDGE,
Respondents,
and
THOMAS EITEL,
Real Party in Interest.

No. 52468

FILED

OCT 02 2008

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original proper person petition for a writ of mandamus challenges several aspects of the underlying district court action. Specifically, petitioner claims that he is entitled to a jury trial because he filed a demand under NRCP 38, that he has been denied pretrial discovery, and that the district court has failed to rule on his motion for leave to file an amended complaint to add two defendants.

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

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).

to demonstrate that our intervention by way of extraordinary relief is warranted.³ Having reviewed the petition and its supporting documents, we are not persuaded that extraordinary relief is warranted.

First, NRCP 38(b) provides that a jury trial may be demanded of right by filing and serving a jury demand as required by NRCP 5(b) no later than entry of an order first setting the case for trial. Here, the documents attached to the petition reflect that the order setting the case for trial was entered on July 31, 2008, and petitioner's jury demand was filed on August 21, 2008. Accordingly, petitioner's demand was untimely.⁴

Next, the documentation provided with the petition does not indicate that petitioner complied with NRCP 16.1 or that he sought discovery under NRCP 26-37. Accordingly, petitioner has not established that the district court had any duty to compel pretrial discovery.

Finally, while petitioner contends that his motion for leave to amend his complaint to add two defendants is still pending, the available documentation indicates that one of the defendants has been served, and for the other service was attempted but was unsuccessful. Petitioner has not explained how summonses were issued and service completed or attempted absent filing of the amended complaint. It thus appears that these two defendants have in fact been successfully added. Moreover, even if the motion remains pending, we are confident that the district

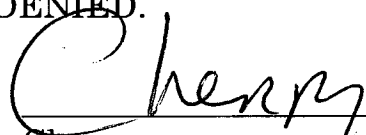
³Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

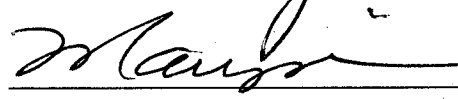
⁴It is not clear from the petition whether petitioner has moved for a jury trial under NRCP 39(b).


court will resolve the motion as its docket permits, certainly before trial.
Therefore, extraordinary relief is unwarranted.

As petitioner has not demonstrated that our extraordinary
intervention is appropriate, we

ORDER the petition DENIED.


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

cc: Hon. David A. Huff, District Judge
Jerry Lynn Davis
Lyon County District Attorney
James E. Wilson
Lyon County Clerk