

IN THE SUPREME COURT OF THE STATE OF NEVADA

ENDOSCOPY CENTER OF SOUTHERN
NEVADA, L.L.C., A LIMITED
LIABILITY COMPANY; AND
GASTROENTEROLOGY CENTER OF
NEVADA,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
ALLAN R. EARL, DISTRICT JUDGE,
Respondents,

and

MICHAEL CORDERO AND RICHARD
TAYLOR, NEVADA CITIZENS,
Real Parties in Interest,

and

4000 NON-INFECTED PLAINTIFFS,
Intervenors/Real Parties in Interest.

No. 52613

FILED

FEB 05 2010

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying a motion to dismiss a tort action.

Having reviewed and considered all documents before this court, including the petition, answers,¹ replies, joinders, and the amicus

¹The intervenors' June 17, 2009, motion to supplement their answer is denied, as the unpublished New Jersey jury verdict does not constitute a
continued on next page . . .


brief,² we are not persuaded that this court's intervention by way of extraordinary relief is warranted. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (stating that whether to grant writ relief is discretionary with this court). In particular, petitions for extraordinary relief generally may only issue when there is no plain, speedy, and adequate remedy at law. NRS 34.170; Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). In light of the general adequacy of an appeal and our extensive docket, we typically decline to exercise our discretion to consider writ petitions challenging district court orders that deny motions to dismiss unless "no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action." Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 362, 662 P.2d 1338, 1340 (1983). We conclude that the issues raised in this case are best considered in the context of an appeal from the final judgment, with the assistance of a fully-developed record. Accordingly, we


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citation to proper authority. SCR 123; N.J.R. of Ct. 1:36-3. We direct the clerk of this court to detach and return, unfiled, the exhibit to the intervenors' motion to supplement.

²We grant the unopposed motion by the Product Liability Advisory Council to file an amicus brief and for pro hac vice admission of Victor E. Schwartz and Cary Silverman. We direct the clerk of this court to file the amicus brief provisionally received on June 30, 2009.

ORDER the petition DENIED.³


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Allan R. Earl, District Judge
Alverson Taylor Mortensen & Sanders
Bonne, Bridges, Mueller, O'Keefe & Nichols
Lewis Brisbois Bisgaard & Smith, LLP
Macdonald Devin, PC
Mayor Law Firm
Olson, Cannon, Gormley & Desruisseaux
Schuering Zimmerman Scully Tweedy & Doyle LLP
Kemp, Jones & Coulthard, LLP

³We note that petitioner has apparently filed a bankruptcy petition. As this writ petition is an original proceeding in this court initiated by petitioner, and not an action by a creditor to collect a debt from petitioner, we conclude that our disposition does not violate the automatic stay provisions of 11 U.S.C. § 362(a). See Koolik v. Markowitz, 40 F.3d 567 (2d Cir. 1994); In re Way, 229 B.R. 11 (Bankr. 9th Cir. 1998).

We deny the intervenors' motion for a stay as moot in light of this order.

Mainor Eglet Cottle, LLP
Hall, Prangle & Schoonveld, LLC/Las Vegas
Hutchison & Steffen, LLC
Perry & Spann/Reno
Shook, Hardy & Bacon LLP/Washington, DC
Eighth District Court Clerk