

IN THE SUPREME COURT OF THE STATE OF NEVADA

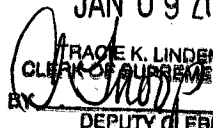
JESS AQUINO MURILLO,
INDIVIDUALLY, AND MARJORIE
RAMOS, INDIVIDUALLY,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JESSIE WALSH, DISTRICT JUDGE,
Respondents,
and
ALBUQUERKE DEFERNANDES,
INDIVIDUALLY,
Real Party in Interest.

No. 52624

FILED

JAN 09 2009
TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court order granting in part a motion for reconsideration. As directed, the real party in interest filed a timely answer to the petition.

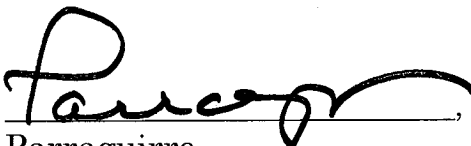
A writ of prohibition is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. NRS 34.320. Prohibition is an extraordinary remedy, however, and whether a petition will be considered is within our discretion. See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioners bear the burden to demonstrate that our intervention by way of extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

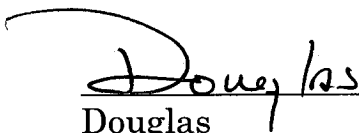
The district court entered a final judgment in the underlying district court case. The real party in interest then filed a motion for reconsideration and, while that motion was pending, also filed a notice of appeal from the final judgment. After the notice of appeal was filed, the

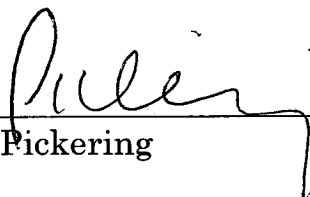
district court entered an order purporting to grant in part the motion for reconsideration. Petitioners now challenge the district court's jurisdiction to enter the order granting reconsideration.

A timely notice of appeal divests the district court of jurisdiction over the matter appealed from and vests jurisdiction in this court. Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987). Thus, when real party in interest filed the notice of appeal while the motion for reconsideration was pending, the district court was divested of jurisdiction to rule on the motion. If the district court was inclined to grant reconsideration, the court and the parties should have followed the procedure set forth in Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978).¹ Accordingly, as the district court lacked jurisdiction to grant reconsideration, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION instructing the district court to vacate its order granting reconsideration in part.


Parraguirre, J.


Douglas, J.


Pickering, J.

¹We note that this order is without prejudice to any right to follow the Huneycutt procedure.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Kravitz, Schnitzer, Sloane, Johnson & Eberhardy, Chtd.
Gazda & Tadayon
Eighth District Court Clerk