

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTEN L. BELING AND WILLIAM  
DOUGHERTY, JR.,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
MICHAEL VILLANI, DISTRICT  
JUDGE,

Respondents,

and

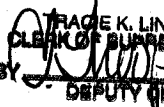
CHERYL DAVIS; JAMES PENDRAY;  
TRIPLE WIN, LLC; AND CHERYL  
DAVIS AND ASSOCIATES,

Real Parties in Interest.

No. 52646

**FILED**

OCT 27 2008

FRANCE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER DENYING PETITION  
FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition seeks to compel the district court to reverse its decision to grant a motion in limine and exclude certain evidence.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion.<sup>1</sup> We may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district

---

<sup>1</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

court's jurisdiction.<sup>2</sup> Both mandamus and prohibition are extraordinary remedies, and whether a petition for extraordinary relief will be considered is solely within our discretion.<sup>3</sup> Generally, a writ may issue only when petitioners have no plain, speedy, and adequate legal remedy,<sup>4</sup> and this court has consistently held that an appeal is generally an adequate legal remedy precluding writ relief.<sup>5</sup> Petitioners bear the burden of demonstrating that extraordinary relief is warranted.<sup>6</sup>

On October 23, 2008, this court denied a writ petition seeking largely identical relief, based on petitioners' failure to comply with NRAP 21(a).<sup>7</sup> On October 27, 2008, petitioners filed the instant petition, with additional supporting documentation, challenging the district court's exclusion of certain evidence. According to the October 27 petition, trial was set to begin that same day and to conclude sometime between October 29 and November 3. Because trial has apparently already begun, it appears that petitioners, if aggrieved, will have a speedy and adequate remedy available in the form of an appeal from the final judgment in the underlying case. The fact that petitioners will be required to incur

---

<sup>2</sup>See NRS 34.320.

<sup>3</sup>See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

<sup>4</sup>NRS 34.170; NRS 34.330.

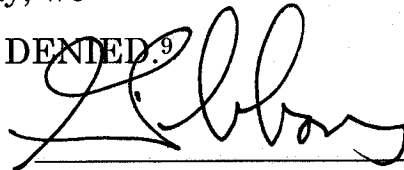
<sup>5</sup>See Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

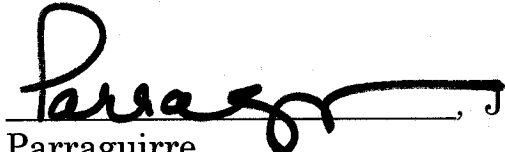
<sup>6</sup>Id. at 228, 88 P.3d at 844.


<sup>7</sup>Beling v. Dist. Ct. (Davis), Docket No. 52576 (Order Denying Petition For Writ of Mandamus or Prohibition, October 23, 2008).

attorney fees and other litigation expenses in the course of trying the underlying case does not warrant this court's intervention by way of extraordinary relief.<sup>8</sup> Accordingly, we

ORDER the petition DENIED.<sup>9</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Michael Villani, District Judge  
David J. Winterton & Associates, Ltd.  
John G. Benedict  
Dziminski & Associates  
Eighth District Court Clerk

---

<sup>8</sup>Cf. Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000) (concluding that litigation expenses, while potentially substantial, do not constitute sufficient irreparable or serious harm to warrant the imposition of a stay).

<sup>9</sup>See NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851.