

IN THE SUPREME COURT OF THE STATE OF NEVADA

REHAU INCORPORATED,  
Petitioner,

vs.

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

Respondents,

and

DEL WEBB COMMUNITIES, INC.; PN II;  
TERRAVITA HOME CONSTRUCTION  
CO.; AND COX & SONS PLUMBING, INC.,  
Real Parties in Interest.

No. 52647

**FILED**

**APR 14 2009**

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court decision, reflected in the court minutes, to reassign the underlying tort and contract case to the constructional defect court.

FACTS

Real parties in interest Del Webb Communities, Inc., PN II, and Terravita Home Construction Co. ("the developers") instituted an action against petitioner Rehaui Incorporated and real party in interest Cox & Sons Plumbing, Inc., primarily asserting tort- and contract-based causes of action. The developers' causes of action stemmed from allegations that Rehaui and Cox & Sons installed defective plumbing systems in approximately 5000 Southern Nevada homes constructed by the developers.

According to petitioner, the district court determined that this case resembles a constructional defect action, primarily in terms of the developers' allegations and the number of homes that they implicate, and,

consequently, directed the parties to brief whether the court should reassign the case to the constructional defect court. In its brief, petitioner argued, among other things, that the case was not suitable for the constructional defect court as the developers were not seeking any remedies under NRS Chapter 40's residential constructional defect statutes—nor could they. See NRS 40.610(1) (defining a constructional defect “claimant” as an “owner of a residence or appurtenance”). Nevertheless, the developers asserted that although they were not seeking NRS Chapter 40 constructional defect remedies, the case sufficiently resembled a constructional defect action to warrant utilizing the constructional defect court's experience in managing these types of cases. Ultimately, the district court agreed with the developers, as reflected in the district court's minutes, and the case was reassigned to the constructional defect court. This writ petition followed. The developers have filed an answer, as directed.

### DISCUSSION

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. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Mandamus is an extraordinary remedy, and whether a petition for such relief will be considered is solely within our discretion. See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). Petitioner bears 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).

Having considered the petition, the answer thereto, and the parties' supporting documents, we conclude that our intervention by way of extraordinary relief is warranted. Specifically, under the circumstances

here, the district court lacked authority to reassign the underlying action to the constructional defect court.

Under EDCR 1.60(h), a district court judge must reassign a case to the correct division when the case “has been improperly assigned to the wrong division of the court.” Here, there is no suggestion that the underlying tort and contract action was assigned to the wrong division. Indeed, it is a civil matter assigned to a division of the Eighth Judicial District Court designated to hear civil matters. See EDCR 1.62 (providing that “all civil cases not designated business matters shall be divided among those trial judges assigned to the civil/criminal division and full-time civil division”). The underlying case was not assigned to the “wrong division” within the terms of EDCR 1.60(h) simply because the constructional defect court may be a suitable alternative court for this case.

Although the developers argue that DCR 18(1), which gives a district court discretion “to request another judge to assume jurisdiction” over a case, Jeaness v. District Court, 97 Nev. 218, 220, 626 P.2d 272, 274 (1981), authorizes the district court here to reassign this case to the constructional defect court, that argument is unpersuasive. In particular, that rule must be read in light of the more specific provision, EDCR 1.60(a), which gives the Eighth Judicial District Court’s Chief Judge “the authority to . . . reassign all cases pending in the district.” See generally Williams v. Clark County Dist. Attorney, 118 Nev. 473, 485, 50 P.3d 536, 543 (2002) (recognizing that whenever possible to do so, this court will interpret two apparently conflicting statutes in harmony with one another). Thus, although DCR 18(1) gives a district court discretion to request that a case be reassigned, in the Eighth Judicial District Court,

the chief judge ultimately is responsible for any reassignment. In reassigning the case here, the district court exercised authority that did not belong to it.

Because the district court lacked authority to reassign the underlying case to the constructional defect court, it manifestly abused its discretion in so doing. Accordingly, we grant the petition. The clerk of this court shall issue a writ of mandamus directing the district court to vacate its reassignment of this case to the constructional defect court and to proceed with this case, as assigned.

It is so ORDERED.<sup>1</sup>

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Jennifer Togliatti, District Judge  
Crowell & Moring LLP  
Morris Peterson/Las Vegas  
Bremer Whyte Brown & O'Meara, LLP  
Koeller Nebeker Carlson & Haluck, LLP  
Eighth District Court Clerk

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<sup>1</sup>In light of this order, we vacate the stay imposed by our December 3, 2008, order.