

IN THE SUPREME COURT OF THE STATE OF NEVADA

RALEY'S, INC.,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
CONNIE J. STEINHEIMER, DISTRICT
JUDGE,

Respondents,

and

JOHN UPHOFF,
Real Party in Interest.

No. 52710

FILED

NOV 07 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. Uphoff*
DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR CERTIORARI

This is an original petition for a writ of mandamus or certiorari challenging a district court order partially granting a motion in limine to exclude certain evidence.

A writ of mandamus is an extraordinary remedy, and the determination of whether to consider a petition is solely within our discretion.¹ 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.² The petition will only be granted when the petitioner has a clear right to

¹See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

²See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

the relief requested and no plain, speedy, and adequate remedy in the ordinary course of law.³ Furthermore, the burden is on the petitioner to establish that mandamus relief is appropriate.⁴ A writ of certiorari is used “to remedy jurisdictional excesses committed by an inferior tribunal, board, or officer, exercising judicial functions.”⁵ As this petition does not provide any argument as to how the district court acted beyond its jurisdiction, the petition is more appropriately considered under mandamus standards.

This petition challenges the admissibility of evidence, a decision that is within the broad discretion of the district court.⁶ We have previously held that the determination regarding the admissibility of evidence “is not . . . a question properly addressed in a petition for a writ of mandate.”⁷ The district court’s decisions concerning admissibility of evidence are properly challenged on appeal from a final judgment.⁸

³Gumm v. State, Dep’t of Education, 121 Nev. 371, 375, 113 P.3d 853, 856 (2005).

⁴Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); NRAP 21(a).

⁵Las Vegas Police Prot. Ass’n v. Dist. Ct., 122 Nev. 230, 241, 130 P.3d 182, 190 (2006).

⁶Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 492, 117 P.3d 219, 226 (2005).

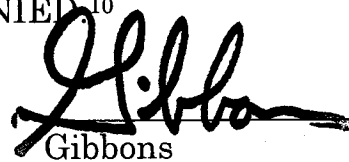
⁷Walton v. District Court, 94 Nev. 690, 693, 586 P.2d 309, 311 (1978).

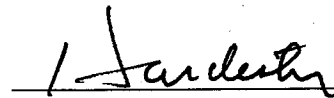
⁸Id. at 693, 586 P.2d at 310.

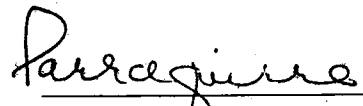
In addition, it does not appear from the documents provided with the writ petition that a written order has been entered. Until a written order has been entered, a petition challenging a district court's decision is improper, as an oral order is ineffective because the district court remains free to reconsider the issue until a written order is filed.⁹

Accordingly, we

ORDER the petition DENIED¹⁰

 _____, C.J.
Gibbons

 _____, J.
Hardesty

 _____, J.
Parraguire

cc: Hon. Connie J. Steinheimer, District Judge
Lauria Tokunaga Gates & Linn, LLP
~~Jeffrey Friedman~~ Terry A. Friedman
Washoe District Court Clerk

⁹State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004).

¹⁰In light of this order, we deny as moot petitioner's request to stay the trial.

We remind petitioner that it is still required to pay the supreme court filing fee by November 17, 2008.