

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFFORD R. MIXER,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
DAVID A. HARDY, DISTRICT JUDGE,
FAMILY COURT DIVISION,
Respondents,
and
BETTY BRYANT; AND
GUARDIANSHIP SERVICES OF
NEVADA, A NEVADA CORPORATION,
Real Parties in Interest.

No. 53055

FILED

FEB 06 2009

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

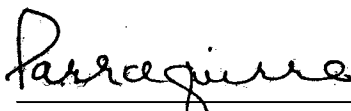
This original amended petition for a writ of mandamus challenges district court orders granting and reinstating a temporary guardianship and seeks to strike the guardianship petition or transfer the matter to another district court judge and to vacate an upcoming hearing on permanent guardianship.

The 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 available only when no plain, speedy, and adequate legal remedy exists, however. NRS 34.170. This court has consistently held that an appeal is an adequate and speedy legal remedy that precludes the availability of writ relief, see Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004), although in certain circumstances, time constraints or other factors may render an appeal insufficiently speedy or adequate, so that writ relief may be appropriate. See D.R. Horton v. Dist.


Ct., 123 Nev. ___, 168 P.3d 731 (2007) (recognizing that several factors impinge on whether an appeal is a speedy and adequate remedy precluding writ relief); Garvin v. Dist. Ct., 118 Nev. 749, 59 P.3d 1180 (2002) (entertaining writ petition when time constraints prevented an appeal). Mandamus is an extraordinary remedy, and whether a petition will be considered is within this court's discretion. See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). Petitioner bears the burden to demonstrate that this court's intervention by way of extraordinary relief is warranted. Pan, 120 Nev. at 227-28, 88 P.3d at 844.

We have considered the writ petition and supporting documents. We note that a permanent guardianship hearing is scheduled later this month, at which a complete record will be adduced. Under these circumstances, we conclude that petitioner has not demonstrated that our extraordinary intervention is warranted at this time.¹ Accordingly, we

ORDER the petition DENIED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

¹We anticipate that the February 2009 hearing will go forward as scheduled. If aggrieved following that hearing, Mixer may appeal from any order on permanent guardianship falling under NRS 159.325. See also NRAP 3A(b)(1). If for any reason that hearing does not go forward as scheduled, then our denial of the instant petition is without prejudice to a renewed petition challenging the temporary guardianship.

cc: Hon. David A. Hardy, District Judge
K. Sue Trimmer
White Law Chartered
Stanley H. Brown Jr.
Washoe District Court Clerk