

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT ALBANESE; BERNARDO ALTERIO;
ROSITA ALTERIO; JESUS ARREDONDO;
JAIME AVINA; DAVID BANCHS; EDWIN
BARTLETT; MAUREEN BARTLETT;
CHRISTINE BIRMINGHAM; TANNAN J.
BIRMINGHAM; HOWARD BONNER; NINA
BONNER; WENDY BOSZAK; JAY
BRANDENBERGER; MARY
BRANDENBERGER; GERALD BROWN; ANNE
BROWN; WALTER BUKOWSKI; ROSEMARY
BUKOWSKI; DAVID CALKINS; MALYNDA
CALKINS; MIGUEL CASILLAS; ARLIEN
CASILLAS; ANA CASTRO-ESTRADA; ROBERT
CLERMONT; JOSEPHINE CLERMONT; DIANA
CLERMONT; BRIAN T. DAHILL; JO ANN
DAVIS; JOHN DUDZIAK; YVONNE DUDZIAK;
TERRY FITZGERALD; SIMONA FITZGERALD;
JOAN R. FREITAS; ROBERTO FUENTES;
MICHAEL GAMBA; JANNA GAMBA; JOHN A.
GARCIA; VINCENT GARROVILLAS; RUBY
GARROVILLAS; GREG GILMAN; HEATHER
GILMAN; EDELL GLOVER; LATONYA
GLOVER; KAREN GOLD; LAWRENCE HUNT;
DIANA RADMALL; TRAVIS HUNTER;
RACHAEL HUNTER; SHERIE J. JACKSON;
KEVIN KNOTT; JOELLE KNOTT; ROGER
KUNCL; IRIS KUNCL; ANDREA LAIRD; LORI
LOTT; STEPHEN MAANS; CHRISTINE
MAANS; AUGUSTINE MACIAS; YOLANDA
MARTINEZ; OSCAR MARTINEZ; WILLIAM L.
PRATOR; CORRINE PRESTON; EDWARD
RATHJE; JOSE REYES; MIREYA CASTRO;
MARIO RUANO; LESLY PERDOMO; ELIVERO
SALINAS; STEVEN SHANE; THERESA SHANE;
CHRISTOPHER B. SIMPSON; LAWRENCE
STANTON; OLGA STANTON; KAREN STEELE;

No. 53121

FILED

APR 09 2009

FRANK K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

LAUREN STENGRUND; PAMELA
STENGRUND; MICHAEL STRECZYN; MARION
STRECZYN; LARRY SUMRALL; JENELLE
SUMRALL; ROBERT SUNDEM; RUTH
SUNDEM; CONSTANCE M. SUTMAN; CHAD
TERRELL; ASHLEY TERRELL; STEPHEN
TREBAOL; EDWARD TREBAOL; JULIO
VALDEZ; FLORENCIA VALDEZ; MARIA
VALENCIA; SEAN WALKER; NICOLE
WALKER; JOAN WALKER; TRAVIS L. WALLIS;
EDWARD WARSCHAUER; DIANE
WARSCHAUER; SHANE E. WECKERLY; APRIL
R. WESTFALL; WILLIAM WILKINSON; AND
LORENA WILKINSON,

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF WASHOE, AND THE
HONORABLE ROBERT H. PERRY, DISTRICT
JUDGE,

Respondents,

and

CENTEX HOMES OF NEVADA,
Real Party in Interest.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus requests an order directing the district court to advance the trial date, currently scheduled to begin on January 11, 2010, in the underlying constructional defect action.

Petitioners are homeowners in the Turtle Creek development in Stead, Nevada. In October 2007, they instituted the underlying action against Turtle Creek's developer, real party in interest Centex Homes of Nevada, based on allegations of defects in their homes. Thereafter, in April 2008, petitioners filed a petition in the district court for a

preferential trial date under NRS 40.689(1)(a), which provides that, in an action arising under NRS Chapter 40's residential constructional defect provisions, on the petition of a party to the action, the district court "shall give preference in setting a date for the trial."

In their petition for preference in setting a trial date, petitioners asserted that a preferential trial would be one that commenced within 120 days from the date of their petition. The district court ultimately concluded that scheduling trial to commence within 120 days of the petition's date was unreasonable. Nevertheless, the court directed the parties to schedule a trial date that was "preferential to all parties." According to petitioners, the parties subsequently were informed that January 11, 2010, was the first available trial date, on which the parties apparently set trial. This writ petition, in which petitioners contend that January 11, 2010, is not preferential under NRS 40.689, followed.

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, however, 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). 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).

After reviewing this petition and its supporting documentation, we are not persuaded that our extraordinary intervention is warranted. Specifically, it does not appear that the district court

manifestly abused its discretion in setting the January 11, 2010, trial date. Accordingly, we

ORDER the petition DENIED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Robert H. Perry, District Judge
Myers, Widders, Gibson, Jones & Schneider, LLP ("NV")
Lee, Hernandez, Kelsey, Brooks, Garofalo, & Blake
Richard R. Sooy & Associates
Washoe District Court Clerk