

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY J. REALMUTO,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
SANDRA L. POMRENZE, DISTRICT
JUDGE, FAMILY COURT DIVISION,
Respondents,

and

DENISE R. REALMUTO N/K/A DENISE
R. OLZASKI,
Real Party in Interest.

No. 53189

FILED

FEB 20 2009

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

ORDER DENYING PETITION FOR WRIT
OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court contempt order. In the challenged order, the district court directed petitioner to pay the \$100,000 judgment entered in the underlying divorce matter, within five days from the contempt order's date. If petitioner failed to comply, the order provided, a bench warrant would issue for his arrest.

In his petition for writ relief, filed in this court on February 2, 2009, petitioner asserts that the bench warrant now is in effect for his arrest. According to petitioner, writ relief is appropriate for three reasons. First, he asserts that a district court cannot order a litigant's incarceration in a civil matter, unless the litigant falls under certain enumerated categories, set forth under NRS 31.480, none of which apply to him. He thus asks this court to issue an extraordinary writ, prohibiting the district

court from incarcerating him as a result of his failure to pay the \$100,000 judgment, noting that he has an appeal from that judgment pending in this court. See Realmuto v. Realmuto, Docket No. 51169.

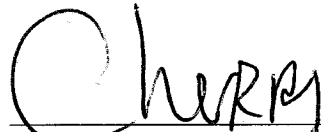
Alternatively, petitioner explains that he filed a Chapter 7 bankruptcy petition in the bankruptcy court on January 22, 2009. A copy of his Chapter 7 bankruptcy petition, including a cover sheet indicating that the petition was entered in the United States Bankruptcy Court for the District of Nevada, Case No. 09-10785, along with a notice of the bankruptcy, filed in the Eighth Judicial District Court on January 27, 2009, were submitted to this court as supporting documents in this writ proceeding. Petitioner asserts that, because the filing of a bankruptcy petition operates as an automatic stay in any judicial action against a bankruptcy debtor, this court should issue an extraordinary writ, directing the district court to quash the bench warrant since it was issued to enforce a judgment that is subject to the automatic bankruptcy stay. Finally, petitioner asserts that the portion of the district court's contempt order that directs that petitioner "shall not be released from custody even in the case of depopulation at the . . . detention center . . . until said cash bond is paid in full," is an infringement on the Department of Correction's authority, which presents a separation of powers issue.


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). The writ of mandamus's counterpart, the writ of prohibition, is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. NRS 34.320. Both mandamus and


prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion. See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). The 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 this petition and its supporting documents, we are not persuaded that our intervention by way of extraordinary relief is warranted. Specifically, petitioner has failed to provide us with all of the documentation “essential to an understanding of the matters set forth in the petition.” NRAP 21(a). For example, petitioner has not submitted any documentation to support his assertion that a bench warrant for his arrest has issued or that the district court has refused to quash the warrant despite the notice of bankruptcy filing, which was filed in the district court on January 27, 2009, just three judicial days before petitioner filed this writ petition. Further, petitioner’s writ petition is deficient in that it is not accompanied by the required affidavit of the party beneficially interested. See NRS 34.170; NRS 34.330. Accordingly, we

ORDER the petition DENIED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Cortese Law Firm
Gordon & Silver, Ltd.
Eighth District Court Clerk