

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN E. GARDE,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK,  
AND THE HONORABLE MATHEW  
HARTER, DISTRICT JUDGE,  
Respondents,  
and  
RESURRECCION N. GARDE,  
Real Party in Interest.

No. 53405

**FILED**

MAR 12 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 seeks to prevent a March 13, 2009, hearing concerning contempt.

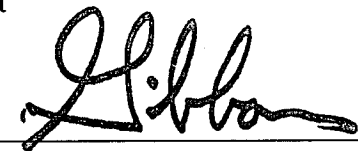
The writ of mandamus is available to compel the performance of an act that the law requires or to control a manifest abuse of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). The writ of mandamus's counterpart, the writ of prohibition, is available to 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 the petition and its supporting documentation, we are not persuaded that our intervention by way of extraordinary relief is warranted. NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851. In particular, despite the pending appeal, the district court retains jurisdiction to adjudicate collateral issues such as contempt. Mack-Manley v. Manley, 122 Nev. 849, 138 P.3d 525 (2006); Bongiovi v. Bongiovi, 94 Nev. 321, 579 P.2d 1246 (1978) (holding that a district court has continuing jurisdiction over matters that are collateral to and that do not affect the merits of a pending appeal). Accordingly, we

ORDER the petition DENIED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Mathew Harter, District Judge  
Jonathan E. Garde  
Robert W. Lueck, Esq.  
Eighth District Court Clerk