

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVE M. KEEFFE AND MIA C. KEEFFE,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JAMES M. BIXLER, DISTRICT JUDGE,
Respondents,
and
BUDGET SUITES OF AMERICA, LLC,
Real Party in Interest.

No. 53509

FILED

JUN 19 2009

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

ORDER DENYING PETITION FOR WRIT OF CERTIORARI,
OR IN THE ALTERNATIVE, WRIT OF MANDAMUS

This original petition for a writ of certiorari or, in the alternative, a writ of mandamus, challenges a district court's oral ruling dismissing an appeal from a justice court's summary eviction order.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of certiorari is available to cure jurisdictional excesses, when there is no plain, speedy, and adequate legal remedy. NRS 34.020(2). Writs of mandamus and certiorari are extraordinary remedies, and the decision to entertain a petition requesting these forms of relief is within this court's discretion. Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991); Dangberg Holdings v. Douglas Co., 115 Nev. 129, 978 P.2d 311 (1999).

Under NRAP 21(a), a petition for a writ of mandamus must include "copies of any order or opinion or parts of the record which may be

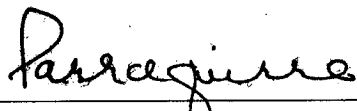
essential to an understanding of the matters set forth in the petition.” Thus, in accordance with NRAP 21(a), petitioners bear the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). NRAP 21(c) extends both the requirements of NRAP 21(a) and the petitioners’ burden of demonstrating that extraordinary relief is warranted to all other petitions for extraordinary relief, such as the alternative request for a writ of certiorari included in this petition. See NRAP 21(c) (stating that proceedings on applications for extraordinary writs other than mandamus and prohibition shall conform “so far as practicable” with the requirements of NRAP 21(a)).

Here, petitioners have provided a copy of the district court’s minutes from the hearing at which the dismissal of their appeal was ordered, but they have not provided a copy of a final written order dismissing the appeal. Because petitioners have not provided this court with a copy of a written, file-stamped order dismissing their appeal, they have not complied with the requirements of NRAP 21(a) and thus have not met their burden of demonstrating that such extraordinary relief is warranted.¹ See Pan, 120 Nev. at 228-29, 88 P.3d at 844; NRAP 21 (a) – (c). Accordingly, we deny the petition. See NRAP 21(b) and (c); Pan, 120 Nev. at 224, 88 P.3d at 841; Smith, 107 Nev. 674, 818 P.2d 849;


¹We note that, pursuant to Rust v. Clark County School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987), an oral pronouncement of judgment is not valid for any purpose, as the district court remains free to reconsider and issue a written judgment different from its oral pronouncement. Thus, to the extent that a written order dismissing the underlying appeal has not yet been entered, the absence of such an order constitutes an independent basis for denying this petition.

Schumacher v. District Court, 77 Nev. 408, 365 P.2d 646 (1961). We note, however, that our denial of this petition is without prejudice to petitioners' right to file a new petition in this court with copies of all necessary supporting documents, including a written, file-stamped order dismissing their appeal.

It is so ORDERED.


_____, J.
Parraguire


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Nevada Legal Services/Las Vegas
Darcy Ann Green
Eighth District Court Clerk