

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER M. SIMON, M.D.,
INDIVIDUALLY AND AS AN AGENT
FOR RETINA CONSULTANTS OF
NEVADA, A NEVADA CORPORATION,
Petitioner,

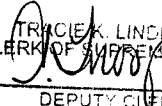
vs.

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
ANYA S. DUKE,
Real Party in Interest.

No. 53705

FILED

NOV 06 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK


ORDER DENYING PETITION
FOR WRITS OF MANDAMUS AND PROHIBITION

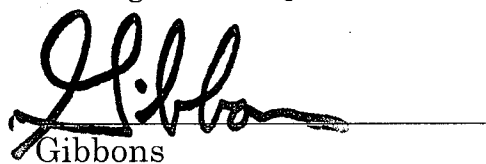
This original petition for writs of mandamus and prohibition challenges a district court order denying petitioner's motion to dismiss the underlying medical malpractice action.

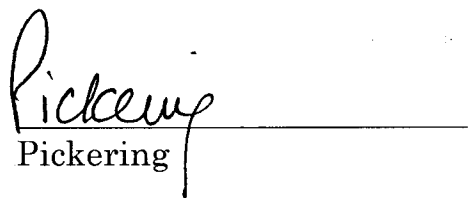
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). We may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320. Both mandamus and prohibition are extraordinary remedies, and whether a petition for extraordinary relief will be considered is solely

within this court's discretion. See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Based on our review of the documents before us, we conclude that our intervention by way of extraordinary relief is not warranted. Accordingly, we deny the petition. See Smith, 107 Nev. at 677, 818 P.2d at 851; NRAP 21(b)(1).

It is so ORDERED.¹

 J.
Parraguirre

 J.
Gibbons

 J.
Pickering

¹We deny Simon's request for leave to file a reply to Duke's answer. The clerk of this court shall file Duke's opposition to this motion, which was provisionally received in this court on July 1, 2009. We further deny any and all relief requested in Duke's "strenuous objection" and motion to strike, which was provisionally received in this court on May 14, 2009. We direct the clerk of this court to file Duke's May 14 request for relief as well as the errata thereto, which was provisionally received on May 21, 2009.

cc: Hon. James M. Bixler, District Judge
Alverson Taylor Mortensen & Sanders
Anya S. Duke
Eighth District Court Clerk