

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH CLEGG, AN INDIVIDUAL; AND RSC
HOLDINGS, LLC, A NEVADA LIMITED
LIABILITY COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE JESSIE WALSH, DISTRICT
JUDGE,

Respondents,

and

HORIZON HOMES, INC., A NEVADA
CORPORATION,

Real Party in Interest.

No. 54050

FILED

AUG 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges the district court's decision to dismiss a case, pursuant to NRCPC 41(e), without prejudice rather than with prejudice.

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 relief is available only when no speedy and adequate remedy at law exists, NRS 34.170, and this court has held that an appeal is generally a speedy and adequate remedy that precludes writ relief. See Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Mandamus is an extraordinary remedy, and it is within our discretion to determine if a petition will be considered. Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). It is petitioners' burden to demonstrate

that our extraordinary intervention is warranted. Pan, 120 Nev. at 228, 88 P.3d at 844. To that end, NRAP 21(a) requires that petitions for extraordinary relief be accompanied by “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.”

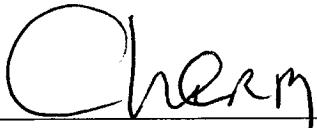
Here, petitioners challenge the district court’s decision to dismiss the underlying action without prejudice rather than with prejudice. According to petitioners, an order was entered by the district court dismissing the underlying case, without prejudice, on June 3, 2009. Although petitioners have provided a transcript of the hearing on their motion to dismiss, they have not provided a copy of the written, file-stamped order dismissing the underlying case, and thus they have not met their NRAP 21(a) burden of demonstrating that extraordinary relief is warranted. Pan, 120 Nev. at 228, 88 P.3d at 844.

Additionally, according to petitioners, the challenged order dismissed the underlying “case.” Thus, to the extent that a written, file-stamped order of dismissal, which resolved all claims as to all parties and left nothing for future consideration except for certain postjudgment issues was entered by the district court and thus constitutes the final judgment in the underlying case, see Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000), petitioners have a speedy and adequate legal remedy available in the form of an appeal from that order and writ relief is therefore not available. NRS 34.170, Pan, 120 Nev. at 224, 88 P.3d at 841.¹

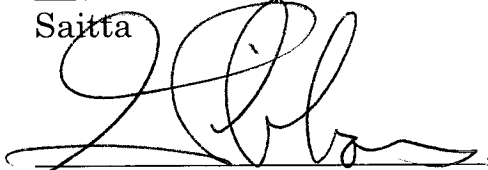
¹We note that, to the extent that the time for filing an appeal from any written, file-stamped final judgment entered in the underlying case
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Accordingly, for the reasons set forth above, we deny the petition. NRAP 21(b), Smith, 107 Nev. 674, 818 P.2d 849.

It is so ORDERED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jessie Elizabeth Walsh, District Judge
Lin & Associates
Perry & Spann/Las Vegas
Eighth District Court Clerk

... *continued*

may have run, writ relief is not available to correct an untimely notice of appeal. Pan, 120 Nev. at 224-25, 88 P.3d at 841.