

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 BIXLER, DISTRICT JUDGE,  
Respondents,  
and  
BUDGET SUITES OF AMERICA, LLC,  
Real Party in Interest.

No. 54136

**FILED**

OCT 08 2009

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

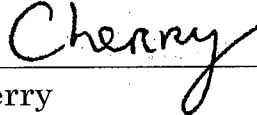
ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of certiorari or, alternatively, mandamus challenges a district court order dismissing an appeal from a justice court summary eviction order. Real party in interest timely filed an answer, as directed, in which it takes “no position” on the propriety of the district court’s order and expresses “no objection” as to expunging the justice court’s eviction order, in light of the fact that the matter became moot when petitioners vacated the premises.


A writ of mandamus is available to compel a district court to act in its appellate capacity when it has improperly refused to do so. See State of Nevada v. Dist. Ct., 116 Nev. 127, 134, 994 P.2d 692, 696 (2000). Here, while the district court apparently determined that the appeal was moot, it ostensibly failed to consider whether, in light of that fact, the justice court’s eviction order should be vacated. See U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 513 U.S. 18, 25 (1994) (“A party who seeks review of the merits of an adverse ruling, but is frustrated by

the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment.” (citing United States v. Munsingwear, 340 U.S. 36, 39-40 (1950)); see also Panterra Corp. v. American Dairy Queen, 908 S.W.2d 300 (Tex. App. 1995); cf. Boulet v. City of Las Vegas, 96 Nev. 611, 614, 614 P.2d 8, 10 (1980) (declining to agree that vacatur is the proper remedy in a moot case when the party invoking it has “slept on its rights”). Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its dismissal order so that it may enter a new order after considering whether the matter should be remanded with instructions to the justice court to vacate the eviction order in light of the appeal’s mootness.<sup>1</sup>

  
\_\_\_\_\_, J.  
Cherry

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

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

---

<sup>1</sup>Petitioners’ alternative request for certiorari is denied.

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