

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIVIERA HOLDINGS CORPORATION,  
A NEVADA CORPORATION; RIVIERA  
OPERATING CORPORATION, A  
NEVADA CORPORATION; AND  
RIVIERA HOTEL AND CASINO, A  
NEVADA CORPORATION,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
DAVID BARKER, DISTRICT JUDGE,  
Respondents,  
and  
BALILISA ESPINOZA AND  
FRANCISCO ESPINOZA,  
Real Parties in Interest.

No. 54816

**FILED**

**NOV 13 2009**

TRACEE 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 denial of petitioners' motion to dismiss a complaint under NRCP 4(i) and motion for reconsideration thereof in a tort 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 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). Mandamus will not issue when petitioners have a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (recognizing that the right to appeal is generally an adequate legal remedy precluding


writ relief). Whether a petition for a writ of mandamus will be considered is purely discretionary with this court. See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioners bear the burden of demonstrating that such extraordinary relief is warranted. Pan, 120 Nev. at 228, 88 P.3d at 844; NRAP 21(b)(1).

Having considered the petition and supporting documents, we conclude that petitioners have not met their burden of demonstrating that our intervention by way of extraordinary relief is warranted at this time. We note that petitioners have not provided this court with copies of the challenged orders or their motions, any oppositions or replies filed in connection with those motions, or any hearing transcripts. See NRAP 21(a)(4) (requiring the petition to include copies of any order or parts of the record that may be essential to an understanding of the matters set forth in the petition). Accordingly, we conclude that the petitioners have not met their burden of showing that extraordinary writ relief is warranted, Pan, 120 Nev. at 228, 88 P.3d at 844, and thus, we order the petition denied. Smith, 107 Nev. 674, 818 P.2d 849.

It is so ORDERED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Parraguirre

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

  
\_\_\_\_\_, J.  
Pickering

<sup>1</sup>In light of this order, we deny petitioners' stay motion as moot.

cc: Hon. David B. Barker, District Judge  
Rands, South & Gardner/Henderson  
Odunze & Kang, LLP  
Eighth District Court Clerk