

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MARKING AND
ELIZABETH FLEMING,
Petitioners,

vs.

THE SIXTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
LANDER, AND THE HONORABLE
RICHARD A. WAGNER, DISTRICT
JUDGE,

Respondents,

and

VIRGINIA GALLEGOS,
Real Party in Interest.

No. 55539

FILED

MAR 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original proper person petition for a writ of mandamus challenges a district court order that denied a district court petition for writ of mandamus and resolved on various motions.

A writ of mandamus is available only when there is no plain, speedy, and adequate remedy at law. NRS 34.170. This court has recognized that an appeal is generally a speedy and adequate remedy that precludes writ relief. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Here, petitioners seek to challenge a district court order resolving their petition for a writ of mandamus and various motions that were apparently submitted concurrently with their petition, and thus, petitioners have a speedy and adequate remedy precluding writ relief.¹

¹To the extent that petitioners also challenge the postjudgment order denying their motion to amend the order denying their petition, that is not an appealable order. Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995), superseded on other grounds by

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See NRAP 3A(b)(1) (providing for an appeal from a final judgment in an action commenced in the district court); Kay v. Nunez, 122 Nev. 1100, 146 P.3d 801 (2006) (considering an appeal from a district court order that, among other things, denied a petition for a writ of mandamus). Indeed, petitioners assert in their petition that they have also filed a notice of appeal from this order in the district court, although at this time that document has not yet been received and docketed in this court.² Accordingly, because petitioners have a speedy and adequate remedy available, which they have apparently already availed themselves of, we deny this petition. NRS 34.170, Pan; 120 Nev. at 224, 88 P.3d at 841.

It is so ORDERED.³

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

... continued

statute as stated in RTTC Communications v. Saratoga Flier, 121 Nev. 34, 110 P.3d 24, (2005). We will, however, consider the arguments raised in that motion in resolving any appeal from the final judgment.

²If the district court ultimately fails to file this document and/or transmit it to this court, then a petition for a writ of mandamus filed in this court would be an appropriate vehicle for challenging any such action.

³We conclude that petitioners have demonstrated good cause for the waiver of the filing fee, and thus, no fee is due. NRAP 21(e). As a result, we deny as moot petitioner's motion for leave to proceed in forma pauperis.

cc: Hon. Richard Wagner, District Judge
Elizabeth Fleming
Michael Marking
Virginia Gallegos
Lander County Clerk