

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW MCCUTCHEON,  
Petitioner,

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

WANDA PUGH, INDIVIDUALLY, AND  
AS PARENT AND GUARDIAN OF  
JULIA PUGH; AND WILLIAM PUGH,  
INDIVIDUALLY,  
Real Parties in Interest.

No. 56611

**FILED**

DEC 09 2010

TRACEE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

ORDER DENYING PETITION  
FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion for reconsideration 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 a manifest abuse of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). The counterpart to a writ of mandamus, a writ of prohibition, is available when a district court acts without or in excess of its jurisdiction. NRS 34.320; State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002). Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if a petition will be considered. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d

849, 851 (1991). Having reviewed the petition, we conclude that this court's extraordinary intervention is not warranted. Id.; NRAP 21(b)(1). Accordingly, we

ORDER the petition DENIED.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. David B. Barker, District Judge  
Bremer Whyte Brown & O'Meara, LLP  
Richard Harris Law Firm  
Eighth District Court Clerk