

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON HUFFER,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE MICHAEL
VILLANI, DISTRICT JUDGE,
Respondents,
and
PERRY KLEIN; AND RITA KLEIN,
Real Parties in Interest.

No. 57016

FILED

JUL 20 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Lindeman
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is a proper person petition for a writ of mandamus challenging a district court order denying a motion to dismiss under NRCP 41(e). Petitioner argues that an oral pronouncement from the district court that purported to stay the case for the purposes of the NRCP 41(e) five-year rule was ineffective in tolling the rule. Real parties in interest have filed a response, as directed, and petitioner has filed a reply.

The issuance of a writ of mandamus is purely within this court's discretion. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851-52 (1991). Under NRAP 21(a)(4), a petition for extraordinary relief must contain, among other things, copies of any necessary parts of the record. See Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844

(2004).¹ Thus, because a petitioner bears the burden of demonstrating that extraordinary relief is warranted, *id.*, he must provide this court with any and all materials that are “essential to understand the matters set forth in the petition.” NRAP 21(a)(4). Since this court is unable to properly evaluate petitions that fail to comply with NRAP 21(a)(4), such petitions are routinely denied. *Pan*, 120 Nev. at 229, 88 P.3d at 844.

Here, when this court directed real parties in interest to file an answer to the petition, we noted that petitioner had failed to provide a copy of the complaint and provided petitioner another opportunity to file that document. In response, petitioner filed a copy of an amended complaint, rather than a copy of the original complaint, and thus this court is still unable to verify when the NRCP 41(e) period began. *See Baker v. Noback*, 112 Nev. 1106, 1110, 922 P.2d 1201, 1203 (1996) (noting that “the filing of an amended complaint is irrelevant to the calculation of the five-year period under NRCP 41(e)”).

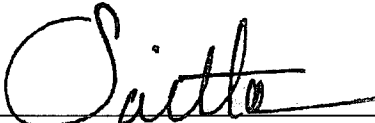
Accordingly, based on petitioner’s failure to provide all documents “that may be essential to understand the matters set forth in the petition”—specifically a copy of the original complaint filed in the action—we conclude that petitioner has not met his burden of demonstrating that extraordinary relief is warranted. NRAP 21(a)(4);

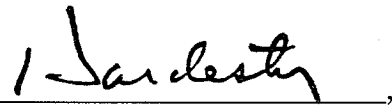
¹NRAP 21(a) was amended effective July 1, 2009. However, the relevant substantive portions of this rule remain the same and, as a result, our decision in *Pan* continues to govern the requirements for petitions for extraordinary relief filed in this court.

Pan, 120 Nev. at 228, 88 P.3d at 844. We therefore deny the petition.

Pan, 120 Nev. at 229, 88 P.3d at 844.

It is so ORDERED.²


Saitta, J.


Hardesty, J.


Parraguirre, J.

cc: Hon. Michael Villani, District Judge
Jason Huffer
David J. Winterton & Associates, Ltd.
Eighth District Court Clerk

²Even if this court were to reach the merits of this writ petition, petitioner has failed to provide any discussion of the decision that controls this matter, Massey v. Sunrise Hospital, 102 Nev. 367, 724 P.2d 208 (1986) (applying the NRCP 41(e) three-year rule extension to all defendants when an interlocutory NRCP 54(b) appeal is utilized by a plaintiff). Petitioner's failure to attempt any arguments distinguishing Massey provides an independent basis for this court to deny the writ petition. See Pan, 120 Nev. at 228, 88 P.3d at 844 (explaining that it is petitioner's burden to demonstrate that writ relief is warranted).