

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE ESTATE OF JEFFREY WOSK,
Petitioner,
vs.
THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE;
AND THE HONORABLE ROBERT W.
LANE, DISTRICT JUDGE,
Respondents,
and
CAROLINA PATTON,
Real Party in Interest.

No. 57078

FILED

MAY 11 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. Shaw*
DEPUTY CLERK

ORDER DENYING PETITION

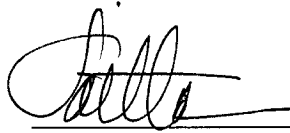
This original petition for a writ of mandamus challenges a district court order denying a motion to dismiss and granting a motion to amend the complaint.

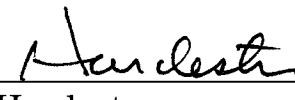
A writ of mandamus may be issued “to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station.” International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); see also NRS 34.160. This court will generally decline to consider writ petitions challenging district court orders denying motions to dismiss because an appeal from the final judgment is usually an adequate and speedy legal remedy, precluding writ relief, and even when it is not, such writ petitions “rarely have merit, often disrupt district court case processing, and consume an enormous amount of this court’s resources.” International Game Tech., 124 Nev. at 197, 179 P.3d at 558-59 (internal quotations omitted). In some instances, this court will consider such petitions if no factual dispute exists and the district

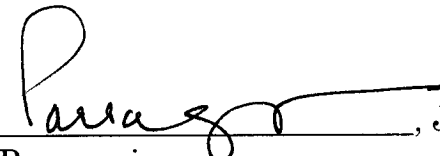
court was obligated to dismiss the action pursuant to clear authority or if an important issue of law needs clarification. Id. at 197-98, 179 P.3d at 559. Petitioner bears the burden of demonstrating that our extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Upon consideration of the present writ petition, answer, and appendix, we conclude that petitioner has not met its burden of showing that extraordinary intervention is warranted. See id. Regardless of whether the estate was a properly named party, petitioner has not established that the district court had a clear duty to deny the motion to amend and to dismiss the district court action. See Servatius v. United Resort Hotels, 85 Nev. 371, 372-74, 455 P.2d 621, 622-23 (1969) (providing that even after the statute of limitations has run, a complaint may be amended to correctly identify a party defendant already before the court, where the party defendant had actual notice of the action, knew it was a proper defendant, and was not misled to its prejudice). Accordingly, we

ORDER the petition DENIED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Robert W. Lane, District Judge
Ken R. Bick
Stovall & Associates
Nye County Clerk