

IN THE SUPREME COURT OF THE STATE OF NEVADA

BERTH H. MILTON, JR., AN
INDIVIDUAL,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,

Respondents,

and

CONSIPIO HOLDING, BV, A
CORPORATION ORGANIZED UNDER
THE LAWS OF THE NETHERLANDS;
ILAN BUNIMOVITZ, AN INDIVIDUAL;
TISBURY SERVICES, INC., A
CORPORATION ORGANIZED UNDER
THE LAWS OF THE BRITISH VIRGIN
ISLANDS; AND CLAUDIO GIANASCIO,
AN INDIVIDUAL,
Real Parties in Interest.

No. 58526

FILED

APR 17 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying a motion to dismiss for lack of personal jurisdiction.

Real parties in interest Consipio Holding, BV, Ilan Bunimovitz, Tisbury Services, Inc., and Claudio Gianascio filed a complaint against Private Media Group, Inc. (PRVT) seeking injunctive relief and the appointment of a receiver. The real parties in interest also asserted derivative claims on behalf of PRVT against petitioner Berth H. Milton, Jr. and other PRVT directors. Milton then filed a motion to

dismiss for lack of personal jurisdiction. The district court denied Milton's motion to dismiss without prejudice pending the completion of jurisdictional discovery.

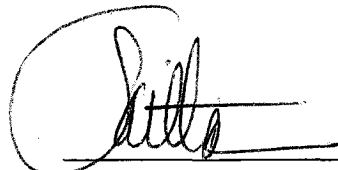
Milton filed this petition for a writ of mandamus or prohibition requesting that we vacate the district court order denying Milton's motion to dismiss. Milton argues that the district court exceeded its jurisdiction by asserting personal jurisdiction over him and thus erred in denying his motion to dismiss. We disagree. Accordingly, we deny Milton's petition for writ relief.¹ Because the parties are familiar with the facts and procedural history of this case, we do not recount them further except as is necessary for our disposition.

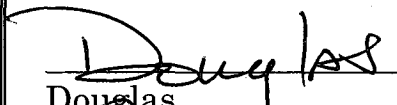
"A writ of mandamus is available 'to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station,' or to control manifest abuse of discretion." State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146, 42 P.3d 233, 237 (2002) (quoting NRS 34.160). A writ of prohibition "compels a government body or official to cease performing acts beyond its legal authority." Ashokan v. State, Dep't of Ins., 109 Nev. 662, 665, 856 P.2d 244, 246 (1993). A writ of prohibition is available to "arrest[] the proceedings of any tribunal . . . when such proceedings are without or in excess of the jurisdiction of such tribunal." NRS 34.320. Both mandamus and prohibition are extraordinary remedies, and whether we will grant a writ petition is within our discretion. See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

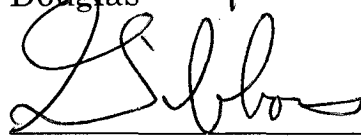
¹Milton asks this court to grant a writ of certiorari if we decide that it would be the more appropriate remedy. However, we conclude that the district court acted within its discretion in denying Milton's motion to dismiss. Thus, we will not issue a writ of certiorari.

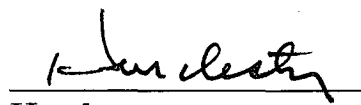
Having reviewed the record, we conclude extraordinary writ relief is not warranted. The district court's denial of Milton's motion to dismiss was without prejudice pending the completion of jurisdictional discovery. Milton still has the ability to challenge the district court's exercise of personal jurisdiction over him. See, e.g., Hospital Corp. of America v. Dist. Court, 112 Nev. 1159, 1161, 924 P.2d 725, 726 (1996) (noting that a defendant may require plaintiffs to show personal jurisdiction by a preponderance of the evidence at trial). Thus, the district court acted within its discretion in denying Milton's motion to dismiss. Accordingly, we


ORDER the petition DENIED.²

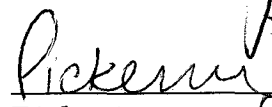

_____, C.J.
Saitta

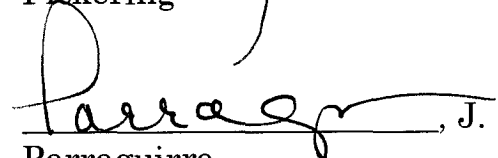

_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Cherry


_____, J.
Pickering


_____, J.
Parraguirre

²We also lift the stay of the district court proceedings granted January 5, 2012.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Snell & Wilmer, LLP/Las Vegas
Laxalt & Nomura, Ltd./Reno
Lionel Sawyer & Collins/Las Vegas
Eighth District Court Clerk