IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL W. DAVIES, SR.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE GAYLE NATHAN, DISTRICT JUDGE,
Respondents,
and
VIRGINIA DAVIES,
Real Party in Interest.

No. 58784

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR WRIT OF MANDAMUS AND PROHIBITION

This is an original petition for a writ of mandamus and/or prohibition challenging a district court order denying petitioner's motion to quash service of process in a divorce action. Real party in interest filed an answer, as directed, and petitioner has filed a reply.

Standard of review

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, or to remedy arbitrary and capricious acts of discretion. International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); NRS 34.160. A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

Neither writ will issue when the petitioner has a plain, speedy, and adequate legal remedy. NRS 34.170; NRS 34.330. Here, as there exists no speedy and adequate legal remedy to correct an invalid exercise of personal jurisdiction, petitioner appropriately seeks a writ of prohibition.[1] It is within our discretion to determine if a petition for writ of prohibition will be considered. Smith, 107 Nev. at 677, 818 P.2d at 851. Petitioner bears the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the parties' arguments and petitioner's appendix, we conclude that a writ of prohibition is warranted to remedy the district court's erroneous assumption of personal jurisdiction over petitioner, only. We deny the petition as it relates to the district court's denial of petitioner's motion to quash service of process altogether. NRS 125.020(2) provides that when a plaintiff or defendant has been a Nevada resident for at least six weeks before the divorce complaint was filed, the Nevada district court has jurisdiction to dissolve the parties' marriage. Unless the district court has personal jurisdiction over both parties, or in rem jurisdiction over the parties' property, however, the court can do no more than alter the parties' marital status. Simpson v. O'Donnell, 98 Nev. 516, 517-18, 654 P.2d 1020, 1021 (1982).

Personal jurisdiction

Here, petitioner argues that the district court exceeded its jurisdiction when it determined that it had personal jurisdiction over him

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[1]As a writ of prohibition is the appropriate remedy to challenge a district court's refusal to quash service of process, Budget Rent-A-Car v. District Court, 108 Nev. 483, 484, 835 P.2d 17, 18 (1992), we deny petitioner's alternative request for mandamus relief related to the motion to quash.

and, thus, could adjudicate the incidences of the parties' marital relationship, such as financial and other property disputes. We agree. See id. at 518, 654 P.2d at 1021 (holding that a district court must obtain in personam jurisdiction over the parties in a divorce proceeding before it can adjudicate the incidences of the marriage).

Personal jurisdiction can be exercised over a nonresident defendant if Nevada's long-arm statute is satisfied (not at issue here) and due process is met, meaning that the Nevada defendant has sufficient contacts with Nevada such that the district court's exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice. Arbella Mut. Ins. Co. v. Dist. Ct., 122 Nev. 509, 512, 134 P.3d 710, 712 (2006); NRS 14.065. In the underlying proceeding, the district court found that the following facts demonstrated that petitioner, a Utah resident, had sufficient contacts with Nevada to justify exercising jurisdiction over him: petitioner came to Nevada several times to see a doctor, apparently has Nevada casino players' rewards cards that he benefits from, has children in Nevada with whom he maintains contact, and stored personal property at his son's Nevada residence.

We conclude, however, that those facts fail to establish that petitioner has sufficient contacts with Nevada to adjudicate his property rights and the district court's decision that it has authority to exercise personal jurisdiction over him offends "traditional notions of fair play and substantial justice." See Arbella, 122 Nev. at 512-17, 134 P.3d at 712-15 (recognizing that general jurisdiction arises when a nonresident defendant's activities in Nevada are substantial or continuous and systematic and holding that specific jurisdiction exists if three elements are satisfied—one concerning whether the complaint arises from the

defendant's purposeful contact or conduct targeting Nevada); Simpson, 98 Nev. at 518, 654 P.2d at 1021 (holding that the district court did not have personal jurisdiction over the defendant when she was domiciled in Georgia and did not appear in the district court proceedings); see also Freeman v. Dist. Ct., 116 Nev. 550, 553, 1 P.3d 963, 965 (2000) (holding that an insurance company's collection of a de minimis amount of insurance premiums in one particular year did not constitute "substantial or continuous and systematic" activities in Nevada to subject it to the court's general jurisdiction); Laxalt v. McClatchy, 622 F. Supp. 737, 742 (D. Nev. 1985) (providing that a few business or personal trips to Nevada did not establish general jurisdiction over nonresident defendants); Coleman v. Coleman, 864 So. 2d 371, 375 (Ala. Civ. App. 2003) (holding that occasional visits with the parties' children are not purposeful contacts); Bushelman v. Bushelman, 629 N.W.2d 795, 807-08 (Wis. Ct. App. 2001) (stating that the nonresident husband's visits, letters, and telephone calls to Wisconsin did not satisfy the due process minimum contacts requirement to establish personal jurisdiction over him).

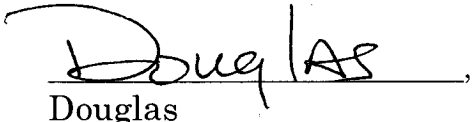
Forum non conveniens

Regarding petitioner's alternative argument regarding forum non conveniens to conduct the divorce proceedings, we conclude that our extraordinary intervention is unwarranted, since we have concluded that the district court may not adjudicate the incidences of the parties' marriage and the majority of petitioner's arguments are based on the location of witnesses and evidence. Regardless, petitioner has not demonstrated that any arbitrary and capricious abuse of discretion occurred. International Game Tech., 124 Nev. at 197, 179 P.3d at 558; Smith, 107 Nev. at 677, 818 P.2d at 851 (providing that writ relief is

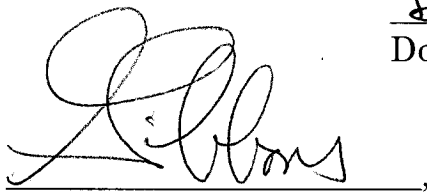
discretionary in this court). Accordingly, we deny the petition as to the forum non conveniens argument.

Based on the above discussion, we

ORDER the petition GRANTED IN PART AND DENIED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION (1) instructing the district court to vacate the portion of its May 25, 2011, order wherein it found that it has personal jurisdiction over petitioner; and (2) precluding the district court from proceeding with any part of real party in interest's complaint beyond the request to dissolve the marriage.



_____, J.
Douglas



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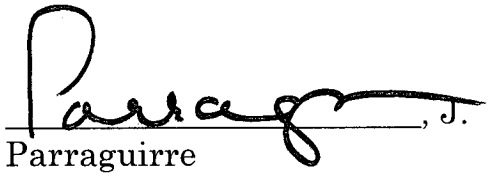

_____, J.
Parraguirre

cc: Hon. Gayle Nathan, District Judge
Pecos Law Group
Smith Legal Group
Eighth District Court Clerk