

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLINT MIHAERE, INDIVIDUALLY;  
AND TRITON GRADING & PAVING,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
MARK R. DENTON, DISTRICT JUDGE,  
Respondents,  
and  
ERIC THOMPSON,  
Real Party in Interest.

No. 58994

**FILED**

SEP 15 2011

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

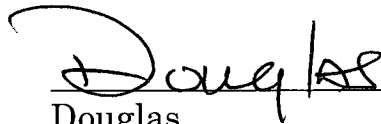
ORDER DENYING PETITION  
FOR WRIT OF MANDAMUS OR PROHIBITION

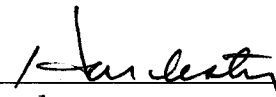
This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion to dismiss under the NRCPC 41(e) five-year rule in a tort action.

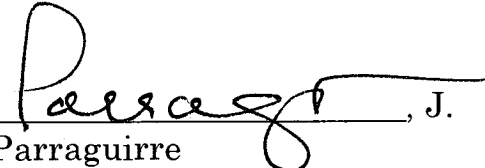
A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition may issue to confine the district court to the proper exercise of its prescribed jurisdiction when the court has acted in excess of its jurisdiction. NRS 34.320. Writ relief is generally available when there is no plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; NRS 34.330.

The issuance of a writ of mandamus or prohibition is purely within this court's discretion. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851-52 (1991). Having reviewed the petition and attached documents, we decline to exercise our discretion to extraordinarily intervene in the district court proceedings. Id.; NRAP 21(b)(1). Accordingly, we

ORDER the petition DENIED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Mark Denton, District Judge  
Emerson & Manke, LLP  
Glen J. Lerner  
The Powell Litigation Group  
Eighth District Court Clerk

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<sup>1</sup>In light of this order, we deny petitioners' August 15, 2011, stay motion as moot.