


IN THE SUPREME COURT OF THE STATE OF NEVADA

DIPAK KANTILAL DESAI, M.D.,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 60038

**FILED**

JAN 24 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges a district court's evidentiary decision related to a competency hearing under NRS 178.460. Having considered the petition and the State's answer on behalf of respondents, we conclude that our intervention is not warranted.


As a general rule, we will not exercise our discretion to consider a petition for a writ of mandamus when the petitioner has a plain, speedy, and adequate remedy at law such as an appeal. NRS 34.170. Despite that general reluctance, we have considered some issues related to competency hearings where an "important legal issue needs clarification." Sims v. Dist. Ct., 125 Nev. 126, 129, 206 P.3d 980, 982 (2009). We are not convinced that this case presents such an issue.


Nor are we convinced that the district court manifestly abused its discretion or exercised its discretion in an arbitrary or capricious

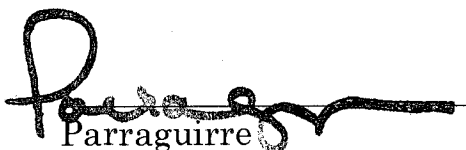


manner. See id. The documents submitted to this court indicate that the upcoming hearing is to examine the members of the Lake's Crossing treatment team on their report pursuant to NRS 178.460(1). The district court's evidentiary decision is consistent with NRS 178.460, which does not include the expansive language that appears in NRS 178.415, and is within the bounds of the law as set forth in our prior decision in Ferguson v. State, 124 Nev. 795, 192 P.3d 712 (2008), which addressed both an untimely motion for a hearing under NRS 178.460 and a subsequent, separate request for a new competency evaluation.<sup>1</sup> See State v. Dist. Ct. (Armstrong), 127 Nev. \_\_\_, \_\_\_, \_\_\_ P.3d \_\_\_, \_\_\_ (Adv. Op. No. 84 at 5, December 29, 2011) (defining manifest abuse of discretion and arbitrary or capricious exercise of discretion). Accordingly, we

ORDER the petition DENIED.<sup>2</sup>

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

  
\_\_\_\_\_, J.  
Gibbons

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

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<sup>1</sup>We note that any motion challenging petitioner's present competency (based on interactions and evaluations since his return from Lake's Crossing) would require a broader inquiry should the motion create sufficient doubt as to petitioner's competency to stand trial to warrant such an inquiry. See Ferguson, 124 Nev. at 805, 192 P.3d at 719; Calvin v. State, 122 Nev. 1178, 147 P.3d 1097 (2006); Morales v. State, 116 Nev. 19, 22, 922 P.2d 252, 254 (2000); NRS 178.405; NRS 178.415. But that inquiry is not part of the proceedings under NRS 178.460.

<sup>2</sup>We deny the motion for a stay as moot.

cc: Hon. Kathleen E. Delaney, District Judge  
Wright Stanish & Winckler  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

