

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK J. DELEE, M.D.,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE

JOANNA KISHNER, DISTRICT
JUDGE,

Respondents,

and

TONYA FOWLER, AS GUARDIAN AD
LITEM FOR AVA FOWLER, A MINOR;

AND SUNRISE HOSPITAL AND
MEDICAL CENTER, LLC,

Real Parties in Interest.

No. 60041

FILED

JAN 23 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS


This original petition for a writ of mandamus challenges a district court order denying a motion for summary judgment in a medical malpractice 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). Mandamus is an extraordinary remedy, and whether a petition will be considered is within our sole discretion. Smith v. District Court, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Further, mandamus will not issue when the petitioner has a plain, speedy, and adequate remedy at law, NRS 34.170, and we have consistently held that an appeal is generally an adequate

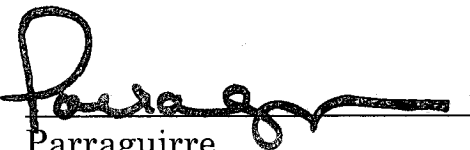
legal remedy precluding writ relief. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

Having reviewed the petition and its supporting documents, we are not persuaded that writ relief is warranted. In particular, there are material issues of fact concerning when the statute of limitations commenced to run, Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (stating that summary judgment is only appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law), and petitioner has an adequate remedy in the form of an appeal from any final judgment. Pan, 120 Nev. at 224, 88 P.3d at 841. Accordingly, we

ORDER the petition DENIED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Joanna Kishner, District Judge
John H. Cotton & Associates, Ltd.
Christensen Law Offices, LLC
Hall Prangle & Schoonveld, LLC/Las Vegas
Eighth District Court Clerk