

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD JAMES KEARNEY,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
EGAN K. WALKER, DISTRICT JUDGE,
Respondents,
and
DEBORAH JEAN (KEARNEY)
SARGEANT,
Real Party in Interest.

No. 60230

FILED

MAY 10 2012

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

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court post-divorce decree qualified domestic relations order granting real party in interest a portion of petitioner's retirement pay.

This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Writ relief is generally not available, however, when the petitioner has a plain, speedy, and adequate remedy at law. See NRS 34.330; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). It is within our discretion to determine if writ relief will issue. 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).

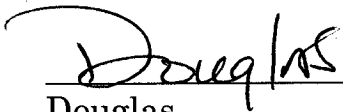
Petitioner filed the instant petition, asserting that the district court lacked personal jurisdiction over him necessary to enter the qualified domestic relations order because petitioner has never lived in the state of Nevada and does not have sufficient contacts with Nevada to permit the court to establish jurisdiction over him. Subsequently, the district court filed in this court a notice of its inclination to hold an evidentiary hearing with regard to its jurisdiction, and, if jurisdiction is found to be lacking, to set aside the qualified domestic relations order.¹ Thus, petitioner has an adequate remedy at law in the form of the district court evidentiary hearing, and we therefore decline to exercise our discretion to grant writ relief in this case.² See NRS 32.330; International Game Tech., 124 Nev.


¹We note that, unlike in an appeal, which deprives the district court of jurisdiction to modify or vacate the order being appealed, the district court retains jurisdiction over an order that is being challenged in this court by way of a writ petition. Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000).

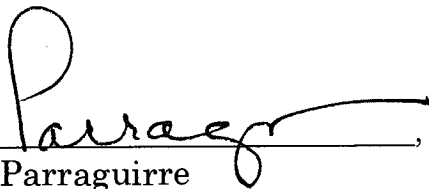
²To the extent that petitioner is concerned that by challenging the order in the district court, he may be entering a general appearance, subjecting him to the jurisdiction of the district court, his concerns are unfounded, as the general/special appearance doctrine is no longer valid, see Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 656-57, 6 P.3d 982, 985-86 (2000), and petitioner may protect his right to raise the personal jurisdiction issue by challenging the divorce decree and the qualified domestic relations order under NRCP 60(b)(4) based on lack of personal jurisdiction. Cf. Gassett v. Snappy Car Rental, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995) (concluding, before the abrogation of the general/special appearance doctrine by Fritz Hansen, that “the filing of a motion to set aside a void judgment previously entered against the movant [did] not constitute a general appearance”).

at 197, 179 P.3d at 558; Smith, 107 Nev. at 677, 818 P.2d at 851; NRAP 21(b)(1). Accordingly, we

ORDER the petition DENIED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Egan K. Walker, District Judge
John C. Hope, Jr.
Deborah Jean (Kearney) Sargeant
Washoe District Court Clerk