

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIMITRITZA TOROMANOVA, AN
INDIVIDUAL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JAMES M. BIXLER, DISTRICT JUDGE,
Respondents,
and
WELLS FARGO BANK, N.A.
(SUCCESSOR BY MERGER WITH
WACHOVIA MORTGAGE, F.S.B.),
Real Party in Interest.

No. 60943

FILED

MAY 30 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER DENYING PETITION FOR EXTRAORDINARY WRIT RELIEF

This proper person original petition for extraordinary writ relief seeks to challenge a district court order affirming a justice court order issuing a writ of restitution in a post-foreclosure unlawful detainer action.

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 control an arbitrary or capricious exercise of discretion.” International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); see also NRS 34.160. A writ of prohibition is available when a district court acts without or in excess of its jurisdiction. NRS 34.320; State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002). A writ of certiorari is available to correct a lower tribunal’s judicial action if the tribunal exceeded its jurisdiction and “there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy.” NRS 34.020(2); Danberg Holdings v. Douglas Co., 115

Nev. 129, 137-38, 978 P.2d 311, 316 (1999). Where there is no plain, speedy, and adequate remedy in the ordinary course of law, extraordinary relief may be available. NRS 34.020; NRS 34.170; NRS 34.330; Smith v. District Court, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Whether extraordinary writ relief will be considered is within our sole discretion. Smith, 107 Nev. at 677, 818 P.2d at 851. It is petitioner's burden to demonstrate that our extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition, we conclude that our intervention by way of extraordinary relief is not warranted.¹ NRAP 21(b)(1), (c); Smith, 107 Nev. at 677, 818 P.2d at 851. Accordingly, we

ORDER the petition DENIED.²


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

¹We note that the district court minutes reflect that the district court expressly entered a temporary stay of execution to permit petitioner to seek relief in either the justice court that issued the writ of execution or the United States District Court that is hearing petitioner's wrongful foreclosure action. See NRS 34.020; NRS 34.170; NRS 34.330; International Game Tech., 124 Nev. at 197, 179 P.3d at 558 (explaining that writ relief is generally not warranted when an adequate legal remedy exists).

²Petitioner's request for a stay is denied as moot in light of this order.

cc: Hon. James M. Bixler, District Judge
Dimitritza Toromanova
Marquis Aurbach Coffing
Eighth District Court Clerk