

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN D. CRONK,
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

MICHELLE LINDSEY, INDIVIDUALLY
AND AS PERSONAL
REPRESENTATIVE AND SPECIAL
ADMINISTRATOR OF THE ESTATE OF
JONATHAN K. LINDSEY, DECEASED,
Real Party in Interest.

No. 61163

FILED

JUN 28 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Malone*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

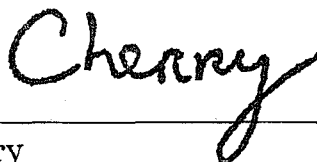
This original emergency petition for a writ of mandamus challenges a district court order denying a motion to stay litigation of the underlying medical malpractice action, which commenced on June 22, 2012, and is set to conclude on June 29, 2012. Petitioner has also filed an emergency motion to stay the underlying district court proceedings pending this court's consideration of the writ petition. Real party in interest opposes the stay motion.

A writ of mandamus is available 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. See NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). It is within this court's discretion to determine if a writ petition will be considered. Smith v. District Court, 107 Nev. 674,

677, 818 P.2d 849, 851 (1991). Additionally, it is petitioner's burden to demonstrate that this court's extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Writ relief is generally available, however, only when there is no plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. Moreover, this court has held that the right to appeal is generally an adequate legal remedy precluding writ relief. Pan, 120 Nev. at 224, 88 P.3d at 841.

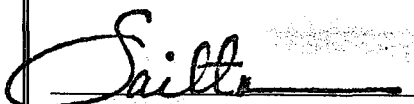
Here, trial of the underlying action has already begun and is near completion, and, once trial has concluded, petitioner, if aggrieved by the final judgment entered following trial, may appeal from that judgment. Accordingly, we conclude that petitioner has a speedy and adequate legal remedy precluding writ relief, id. at 224, 88 P.3d at 841, and we therefore deny the petition. NRAP 21(b)(1),

It is so ORDERED.¹



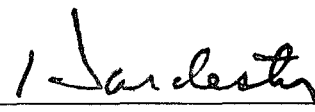
C.J.

Cherry



J.

Saitta



J.

Hardesty

cc: Hon. James M. Bixler, District Judge
Alverson Taylor Mortensen & Sanders
Law Office of Daniel S. Simon
Christiansen Law Offices
Eighth District Court Clerk

¹In light of this order, we deny as moot petitioner's stay motion.