

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGENE P. LIBBY, D.O., PC.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
NANCY L. ALLF, DISTRICT JUDGE,
Respondents,

and

EUGENE P. LIBBY, D.O.; DANIEL
ROBERTS; KRISTY ROBERTS; AND
SUNRISE FLAMINGO SURGERY
CENTER, LIMITED PARTNERSHIP, A
NEVADA LIMITED PARTNERSHIP,
Real Parties in Interest.

No. 61385

FILED

SEP 13 2012

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

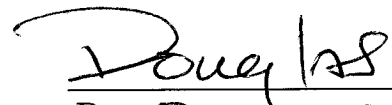
A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Whether a petition for mandamus relief will be considered is purely discretionary with this court. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). 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).


Writ relief is generally available only when there is no plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; NRS 34.330; Smith, 107 Nev. at 677, 818 P.2d at 851. This court typically

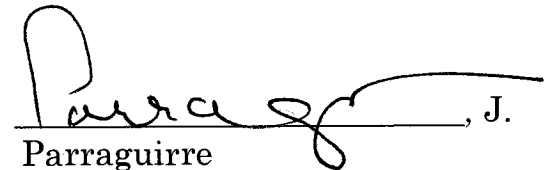
declines to exercise its discretion to consider writ petitions challenging district court orders denying summary judgment motions, unless “no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action.” Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997). 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.

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

ORDER the petition DENIED.¹


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

¹In light of this order, we deny petitioner’s request for a stay of the district court proceedings.

cc: Hon. Nancy L. Alf, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Bowen Law Offices
Hall Prangle & Schoonveld, LLC/Las Vegas
Eighth District Court Clerk