

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY CHARLES,
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
QUALITY GRADING & PAVING, INC.,
A NEVADA CORPORATION,
Real Party in Interest.

No. 61984

FILED

NOV 16 2012

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This proper person original petition for a writ of mandamus, or alternatively, prohibition, challenges district court orders granting summary judgment and ordering the case statistically closed.

“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.” International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (citations omitted); see NRS 34.160. A writ of prohibition may be granted when the district court exceeds its jurisdiction. NRS 34.320. It is within this court’s discretion to determine whether a writ petition will be considered. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioner bears the burden of demonstrating 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; NRS 34.330. 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.

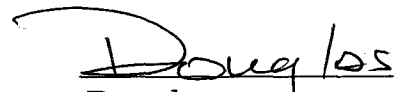
Petitioner filed this petition for a writ of mandamus or prohibition after this court dismissed his appeal from the same district court order granting summary judgment. Charles v. Quality Grading & Paving, Inc., Docket No. 55089 (Order Dismissing Appeal, March 22, 2012). In our order, we determined that we did not have jurisdiction over the appeal because a final order had not been entered in the underlying case. More specifically, the district court had not resolved petitioner's causes of action and had not made any ruling on petitioner's motion for partial summary judgment, filed on March 28, 2007.


After our order was entered on March 22, 2012, petitioner did not file any motion or other pleading in the district court asking it to resolve petitioner's pending motion or claims. As we indicated in our order dismissing petitioner's appeal, an order statistically closing a case does not terminate a case and is not a final order from which an appeal may be taken. Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (describing a final judgment). We have every confidence that, in light of our order denying petitioner's appeal and this order denying writ relief, the district court will respond to an appropriate motion or other filing by petitioner addressing his pending claims and request for judgment.

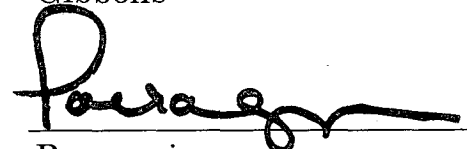
Accordingly, having considered the petition and appendix filed in this matter, we conclude that petitioner has not demonstrated that our intervention by way of extraordinary relief is warranted. Pan, 120 Nev. at 228, 88 P.3d at 844. Once a final order is entered by the district court,

petitioner will have a plain, speedy, and adequate remedy in the form of an appeal from any adverse final judgment. NRAP 21(b)(1); Pan, 120 Nev. at 224, 88 P.3d at 841; Smith, 107 Nev. at 677, 818 P.2d at 851. Accordingly, we

ORDER the petition DENIED.

 _____, J.
Douglas

 _____, J.
Gibbons

 _____, J.
Parraguirre

cc: Hon. James M. Bixler, District Judge
Jeffrey B. Charles
Shawn L. Morris, Ltd.
Eighth District Court Clerk