

IN THE SUPREME COURT OF THE STATE OF NEVADA

P. MICHAEL MARFISI,

Petitioner,

vs.

THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO, AND THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE,

Respondents,

and

PETER D. DURNEY, THOMAS R. BRENNAN, AND DURNEY & BRENNAN, LTD., A NEVADA CORPORATION,

Real Parties in Interest.

No. 35703 ✓

FILED

SEP 26 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

P. MICHAEL MARFISI,

Appellant,

vs.

PETER D. DURNEY, THOMAS R. BRENNAN, AND DURNEY & BRENNAN, LTD., A NEVADA CORPORATION,

Respondents.

No. 35745

ORDER DENYING PETITION FOR WRIT OF MANDAMUS
AND REINSTATING BRIEFING

Docket No. 35703 is a petition for a writ of prohibition challenging a district court order denying petitioner's SCR 48.1 peremptory challenge against the district judge,¹ and Docket No. 35745 is an appeal from the

¹Although petitioner filed a petition for a writ of prohibition, petitioner conceded the judge had jurisdiction to decide the validity of the peremptory challenge. Petitioner contends the judge reached the wrong result. Since the purpose of a writ of prohibition is to prevent courts from transcending the limits of their jurisdiction, and not to correct errors, prohibition will not lie to review the judge's action. See Goicoechea v. District Court, 96 Nev. 287, 289-

continued on next page . . .

district judge's subsequent order granting a change of venue in the same case. After an answer to the writ petition was ordered, received and filed, we consolidated the matters and assigned the writ petition to the settlement judge for consideration together with the appeal. We deferred ruling on the writ petition pending completion of the settlement conference. Pursuant to NRAP 16(g), the settlement judge reported in June 2000 that the parties had agreed to a tentative settlement of the matter; however, in September 2000, he reported the parties were unable to agree to a settlement. Consequently, the writ petition is ripe for review and the appeal requires the establishment of a schedule for preparation of transcripts and briefing.

We have reviewed the petition, and the answer thereto, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. SCR 48.1(5) prohibits the filing of a peremptory challenge against a pro tempore judge assigned by the supreme court to hear any civil matter. Pro tempore is a Latin term meaning "for the time being." See Webster's Third New International Dictionary 1823 (1976); Black's Law Dictionary 1101 (5th ed. 1979). Thus, a "pro tempore judge" is any judge who is assigned or appointed to temporarily fill in for or take the place of another judge. Since Judge Hardesty is a pro tempore judge, it was neither arbitrary nor capricious for


. . . continued

90, 607 P.2d 1140, 1141 (1980). In the interest of judicial economy, we construe the petition as one for mandamus relief. See Koza v. District Court, 99 Nev. 535, 665 P.2d 244 (1983). 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, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

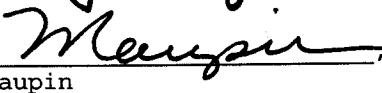
him to rule that the peremptory challenge was invalid. Accordingly, we deny the petition docketed as No. 35703. See NRAP 21(b).

In the appeal docketed as No. 35745, appellant shall have fifteen (15) days from the date of this order within which to file with this court a transcript request form or a certificate of no transcript request.² See NRAP 9(a). Appellant shall have one hundred and twenty (120) days from the date of this order within which to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1). In preparing and assembling the appendix, counsel shall strictly comply with the provisions of NRAP 30.

It is so ORDERED.



Young J.



Maupin J.



Becker J.

²If appellant intends to cite in the opening brief solely to transcripts that were prepared and filed in the district court before the docketing of this appeal, appellant should not file a transcript request form asking the court reporter to prepare these transcripts. Instead, appellant should file and serve a certificate of no transcript request, see NRAP 9(a), and should include copies of the previously prepared transcripts in the appendix to the opening brief. See NRAP 10(b); NRAP 30(b). If, however, appellant desires to order new transcripts that have not yet been prepared or filed, appellant should file and serve a transcript request form specifying the transcripts appellant wants to have prepared. See NRAP 9(a). The court reporter to whom the transcript request form is directed shall have thirty (30) days from the filing of the form to prepare and file with the supreme court a certified copy of the transcripts in accordance with NRAP 9(b).

cc: Hon. James W. Hardesty, District Judge
McDonald Carano Wilson McCune Bergin Frankovich & Hicks
Wilson & Barrows
Walther Key Maupin Oats Cox Klaich & LeGoy
Elko County Clerk