

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM BAUER; AND AMY BAUER,
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
EGAN K. WALKER, DISTRICT JUDGE,
Respondents,

and

IN THE MATTER OF GUARDIANSHIP
ELIZABETH ELAINE BAUER, ADULT
WARD,

Real Party in Interest.

No. 62025

FILED

NOV 06 2012

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS,
OR, IN THE ALTERNATIVE, PROHIBITION

This is an original petition for a writ of mandamus or, in the alternative, prohibition that challenges the district court's authority to conduct hearings in the underlying guardianship proceeding concerning the status of the adult ward's health care.

On September 27, 2012, the district court entered an order setting a status conference in the underlying guardianship matter and, thereafter, scheduled a series of evidentiary hearings to address the health care decisions concerning the adult ward. Petitioners argue that these proceedings exceed the district court's jurisdiction because no petition to remove them as guardians or to terminate or modify their guardianship has been filed under either NRS 159.1853 or NRS 159.1905. Petitioners also argue that medical decisions regarding the ward's health

care are within the guardians' sole discretion. Petitioners seek an order from this court to arrest the district court proceedings.

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). 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). 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).

We have considered the petition, the answer to the petition, and the district court's written order denying petitioners' motion to dismiss the proceedings, which was entered on Saturday, November 3, 2012, and received in this court yesterday, November 5, 2012, and which contains findings of fact and conclusions of law. We conclude that the underlying proceedings are within the district court's jurisdiction and do not constitute an arbitrary or capricious exercise of discretion. The district court has continuing authority to monitor the welfare of the ward under NRS Chapter 159. In particular, NRS 159.081(1) requires the guardian to file written reports in the district court regarding the ward's condition and the guardian's performance of duties. These reports must be filed on an annual basis, and "[a]t such other times as the court may order." NRS 159.081(1)(a) and (c). The district court may prescribe the form and contents for the reports. NRS 159.081(3). NRS 159.081(5) states

district court is not required to hold a hearing or enter an order regarding a report, but presumes that the court is authorized to do so.

The district court is also authorized to appoint an investigator “upon filing of the petition, or any time thereafter” to investigate allegations or claims affecting the ward. NRS 159.046(1). Although the guardian is vested with broad duties for the care and custody of the ward, those duties may be limited by court order. In this regard, NRS 159.079(1) provides that

“[e]xcept as otherwise ordered by the court, a guardian of the person has the care, custody and control of the person of the ward, and has the authority and . . . shall perform the duties necessary for the proper care, maintenance, education and support of the ward, including, without limitation, the following: . . . (b) [a]uthorizing medical . . . or other remedial care and treatment for the ward.”

NRS 159.079(1)(b) (emphasis added). The district court also has the power to remove a guardian for various reasons set forth by statute, see NRS 159.185, and NRS 159.187 allows the court to appoint a successor guardian upon the court’s own motion.

Here, petitioners did not file their annual report for 2011 as required by NRS 159.081(1)(a), and the district court obtained information about concerns over the ward’s medical condition. Petitioners are represented by counsel, have appeared at the hearings, and have been afforded the opportunity to be heard. The purpose of the evidentiary hearings at this time is merely to obtain information in order to make well-reasoned and informed decisions regarding the ward’s medical care. Under these circumstances, we conclude that the district court has not exceeded its jurisdiction or arbitrarily or capriciously exercised its

discretion. Accordingly, we conclude that our intervention by way of extraordinary relief is not warranted, and we deny the petition. See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (stating that the issuance of an extraordinary writ is purely discretionary with this court).

It is so ORDERED.¹

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Egan K. Walker, District Judge
Guinasso Law, Ltd.
Sinai Schroeder Mooney Boetsch Bradley & Pace
Washoe District Court Clerk

¹We deny as moot petitioners' motion for a stay and motion to file supplemental points and authorities.