

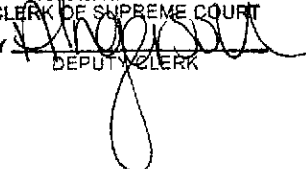
IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE LEIBOWITZ,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
GLORIA STURMAN, DISTRICT  
JUDGE,  
Respondents,  
and  
THE ESTATE OF TONI LEE BENSON,  
Real Party in Interest.

No. 64775

**FILED**

**FEB 13 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DENYING PETITION FOR WRIT OF MANDAMUS*

This original petition for a writ of mandamus challenges a district court order granting partial summary judgment in a conversion of estate assets action.

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; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Mandamus is an extraordinary remedy, and whether a petition will be considered is within our sole discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Petitioner bears the burden of demonstrating that this court's extraordinary intervention is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having reviewed the petition and supporting documents, we conclude that petitioner has not demonstrated that our intervention is

warranted. *Id.*; NRAP 21(b). In particular, petitioner argues that in granting partial summary judgment, the district court erroneously concluded that petitioner was liable for conversion of estate assets under NRS 143.120, ordered petitioner to return funds to the estate, and awarded treble damages. Petitioner first argues that the estate could not prevail on its NRS 143.120 claim because recovery is available only if the party cited for conversion fails to appear before the court, which did not occur here because petitioner made an appearance and is willing to submit to an examination. *See* NRS 143.120(1). Nothing in NRS 143.120, however, limits recovery to the situation where a party fails to appear; rather, damages, including treble damages, are provided for when it is determined that a party converted assets. *See* NRS 143.120(2), (3).

Next, petitioner asserts that damages can be awarded only after an examination. But here the district court concluded that there was no question of material fact as to a portion of the alleged converted funds, therefore determining that an examination was unnecessary as to the recovery of these funds. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). As petitioner has failed to set forth any question of material fact, summary judgment as to these funds was properly granted. *Id.* at 731, 121 P.3d at 1030-31 (stating that once the movant has properly supported the summary judgment motion, the nonmoving party may not rest upon general allegations and conclusions, but must instead set forth by affidavit or otherwise specific facts demonstrating the existence of a genuine issue of material fact for trial); NRCP 56(e).<sup>1</sup>

---

<sup>1</sup>To the extent petitioner seeks to argue that the district court should have postponed ruling on the summary judgment motion pursuant to NRCP 56(f), we conclude that petitioner has failed to set forth sufficient

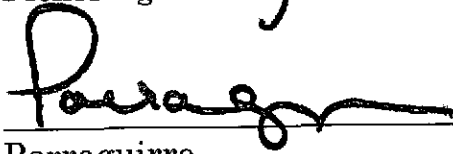
*continued on next page...*

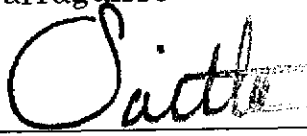
Finally, petitioner argues that the district court improperly considered a new argument raised by real party in interest in its motion for reconsideration. But a review of the district court's order shows that the district court granted treble damages based on real party in interest's original NRS 143.120(3) claim, not the newly raised argument under NRS 143.100. Thus, petitioner's argument lacks merit.

As petitioner has failed to demonstrate that our extraordinary intervention is warranted, we

ORDER the petition DENIED.

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Gloria Sturman, District Judge  
Black & LoBello  
Barlow Flake LLP  
Eighth District Court Clerk

\_\_\_\_\_  
*...continued*

information as to what further discovery was needed in order to oppose the summary judgment motion regarding the limited amount of recovery the district court granted in its partial summary judgment.