

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN CAB COMPANY,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE LINDA MARIE
BELL, DISTRICT JUDGE,
Respondents,
and
LAKSIRI PERERA, INDIVIDUALLY
AND ON BEHALF OF OTHERS
SIMILARLY SITUATED,
Real Party in Interest.

No. 68796

FILED

NOV 22 2016

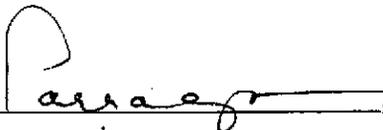
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION

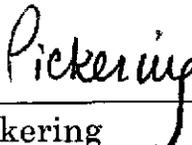
This petition for a writ of mandamus or prohibition challenges a district court order denying a motion to dismiss the real parties' claims under the Minimum Wage Amendment (MWA) to the Nevada Constitution that were filed more than two years after the cause of action accrued. Generally, this court will not consider a writ petition that challenges a district court order denying a motion to dismiss. *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997). The important legal question that petitioner contends supports an exception to this general rule was recently decided by this court in *Perry v. Terrible Herbst, Inc.*, 132 Nev., Adv. Op. 75, ___ P.3d ___ (2016). We held in *Perry* that the two-year statute of limitations set forth in NRS 608.260 applies to claims brought under the MWA. The district court did not have the benefit of that decision when it resolved petitioner's motion and determined that the catch-all limitation period in NRS 11.220 applied.

Because mandamus generally does not lie unless the district court has disregarded "a clear, present legal duty to act" or manifestly abused or arbitrarily and capriciously exercised its discretion, *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981), and the district court should be given an opportunity to reconsider and, if appropriate, revise its decision in light of *Perry*, we deny the petition without prejudice.¹

It is so ORDERED.


_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Hejmanowski & McCrea LLC
Leon Greenberg Professional Corporation
Eighth District Court Clerk

¹We note that prohibition is not appropriate as petitioner has not demonstrated that the district court acted without or in excess of its jurisdiction. NRS 34.320.