

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEOPOLDO MORALES AND FELIPE  
JIMENEZ,

No. 36449

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF WASHOE, AND THE  
HONORABLE STEVEN P. ELLIOTT,  
DISTRICT JUDGE,

**FILED**

APR 11 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

Respondents,

and

FARMERS INSURANCE EXCHANGE,

Real Party in Interest.

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges an order of the district court dismissing petitioners' appeal from a judgment rendered in the justice's court.<sup>1</sup>

A writ of mandamus will issue when the lower court's discretion is manifestly abused, or exercised arbitrarily and capriciously.<sup>2</sup> A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law.<sup>3</sup> Mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered.<sup>4</sup>

<sup>1</sup>We grant petitioners' motion to file a reply to the answer. The clerk of this court shall file the reply provisionally received on December 29, 2000.

<sup>2</sup>See Washoe County Dist. Attorney v. District Court, 116 Nev. \_\_\_, 5 P.3d 562 (2000).

<sup>3</sup>See NRS 34.170.

<sup>4</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

01-06198

Petitioners contend that the district court manifestly abused its discretion in dismissing their appeal based upon the untimely payment of the filing fee and the untimely filing of the opening brief.

JCRCP 76(a) provides that the district court may dismiss an appeal if the appellant fails to timely file the opening brief or pay the filing fees. Further, the rule allows an appellant to show good cause for failure to comply, and the district court shall dismiss the appeal if good cause is not shown.

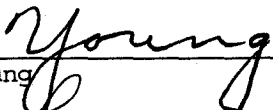
Here, the district court did not make any finding regarding good cause in its dismissal order. However, we conclude that petitioners demonstrated good cause for their untimely compliance with the procedural rules. Petitioners argued in the district court that their untimely compliance with the filing fee rule was unintentional, inadvertent, and resulted from their counsel's belief that a filing fee from a prior, remanded appeal in the same matter would apply.

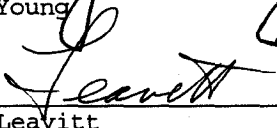
As for the untimely opening brief, petitioners contend that their counsel's unfamiliarity with the local district court briefing rule established good cause for the untimely filing. Further, petitioners point out that the district court entered a briefing schedule order on April 3, 2000, and petitioners' opening brief was timely under that schedule. While the real party in interest argues that the April 3, 2000 order was a mere clerical error and was corrected by the district court's order dismissing the appeal, there is no evidence in the record before us to support that argument. At a minimum, the briefing schedule created confusion, warranting a finding of good cause for the delay.

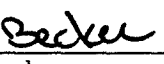
Moreover, we have expressed a preference that appeals be heard on their merits whenever practicable.<sup>5</sup> A motion to dismiss an appeal based upon procedural grounds should be granted only in the most "extreme cases."<sup>6</sup> This is not such an extreme case. The length of petitioners' delay in complying with the filing fee and briefing rules was not substantial.

Accordingly, we conclude that the district court manifestly abused its discretion in dismissing petitioners' appeal, that petitioners have no adequate and speedy legal remedy,<sup>7</sup> and that extraordinary relief is warranted. Therefore, we grant this petition for a writ of mandamus, and direct the clerk of this court to issue a writ of mandamus compelling the district court to vacate its order dismissing the appeal in District Court Case No. CV00-01545, and to allow petitioners' appeal to continue upon such terms as the district court may order.<sup>8</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

<sup>5</sup>See Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

<sup>6</sup>See City of Las Vegas v. Int'l Ass'n Firefighters, 110 Nev. 449, 451-52, 874 P.2d 735, 737 (1994).

<sup>7</sup>See Nev. Const. art. 6, § 6 (stating that the district courts have final appellate jurisdiction over cases arising in justices courts); Tripp v. City of Sparks, 92 Nev. 362, 550 P.2d 419 (1976).

<sup>8</sup>See JCRCP 76(a). We note that a material violation of a procedural rule is grounds for the imposition of sanctions. See City of Las Vegas, 110 Nev. at 452 n.3, 874 P.2d at 737 n.3.

cc: Hon. Steven P. Elliott, District Judge  
Joseph J. Purdy  
Jonathan H. King  
Washoe County Clerk