

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANN L. GRALNICK, INDIVIDUALLY,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
TESSEA MUNN, INDIVIDUALLY; AND
LIBERTY MUTUAL INSURANCE
COMPANY,
Real Parties in Interest.

No. 72048

FILED

MAR 21 2017

BY  ELIZABETH BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS


This original petition for a writ of mandamus challenges a district court order granting leave to intervene and relief from the underlying default judgment under NRCP 60(b)(1).

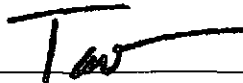
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Here, real party in interest Liberty Mutual Insurance Company moved to intervene in the underlying action after judgment was entered against real party in interest Tessea Munn. Because "NRS 12.130 does not permit intervention subsequent to the entry of a final judgment," *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 556,


853 P.2d 1266, 1268 (1993), the district court was required, as a matter of law, to deny the motion to intervene.

As the district court did not deny the motion to intervene, but instead, granted intervention and then improperly set aside the judgment based on Liberty Mutual's motion, *see id.* at 557, 853 P.2d at 1269 (explaining that, where an insurance company was improperly allowed to intervene, it was not a party to the lawsuit and, thus, could not move to set aside the judgment), writ relief is warranted. *See Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (explaining that whether to consider a writ petition is discretionary); *cf. Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558-59 (explaining that writ relief may be warranted to challenge a district court order denying a motion to dismiss if no factual disputes exist and the district court was obligated by clear authority to dismiss the action). Accordingly, we grant the petition and direct the clerk of the court to issue a writ of mandamus directing the district court to vacate its orders granting intervention and setting aside the judgment and to reinstate the default judgment.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Mark R. Denton, District Judge
Law Office of David Sampson
Law Offices of Elizabeth R. Mikesell
Tessea Munn
Eighth District Court Clerk