

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REBECCA MCMAHON,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
LINDA MARQUIS, DISTRICT JUDGE,
Respondents,
and
JEFFREY ROBERT LEGRECA,
Real Party in Interest.

No. 72129

FILED

APR 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of mandamus or prohibition challenging district court orders affirming a hearing master's recommendations and dissolving two temporary protection orders (TPOs) nunc pro tunc.¹

This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Writ relief is typically not available, however, when the petitioner has a plain, speedy, and adequate remedy at law. See NRS 34.330; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193,

¹Petitioner seeks either a writ of mandamus or a writ of prohibition. Because we conclude that a writ of prohibition is the appropriate remedy, we do not address mandamus relief further in this order.

197, 179 P.3d 556, 558 (2008). And whether to consider a writ petition is within this court's discretion. *See Smith*, 107 Nev. at 677, 818 P.2d at 851.

Here, petitioner Rebecca McMahon cannot appeal the district court's orders. *See McMahon v. Legreca*, Docket Nos. 69212 & 69213 (Order Dismissing Appeals, November 16, 2016) (dismissing McMahon's appeal from the district court's orders for lack of jurisdiction). As she does not have a speedy and adequate legal remedy to challenge these orders, we conclude that a writ proceeding is appropriate, and we therefore exercise our discretion to entertain this petition. *See Smith*, 107 Nev. at 677, 818 P.2d at 851.

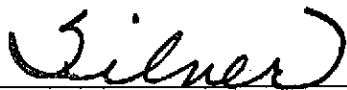
In the petition, McMahon argues the district court lacked jurisdiction to dissolve the TPOs nunc pro tunc. Under Nevada law, "[t]he object and purpose of a nunc pro tunc order is to make a record speak the truth concerning acts done." *Finley v. Finley*, 65 Nev. 113, 118, 189 P.2d 334, 336 (1948), *modified in part on other grounds*, 196 P.2d 766 (1998), *overruled in part on other grounds by Day v. Day*, 80 Nev. 386, 389, 395 P.2d 321, 322 (1964). A nunc pro tunc order may not be used, however, to correct judicial errors or "to change the judgment actually rendered to one which the court neither rendered nor intended to render." *Id.* Moreover, the parties cannot consent to give the court jurisdiction to enter a nunc pro tunc order that it does not otherwise have the authority to enter. *Id.* at 120-21, 189 P.2d at 337.


Real party in interest Jeffrey Robert Legreca does not dispute that a nunc pro tunc order is limited to making the record speak the truth as to what was actually done, but instead, argues that the court in this case acted pursuant to NRCP 60(b)(3), which allows an order to be set aside based on fraud, misrepresentation, or party misconduct. This


argument, however, ignores the fact that, while the district court concluded the hearing master had authority to entertain Legreca's motion to dissolve the TPOs as an NRCP 60(b)(3) motion,² the relief granted by the court did not set aside the TPOs based on fraud, but dissolved the TPOs nunc pro tunc based on the parties' stipulation.

Because Nevada authority does not permit the entry of a nunc pro tunc order for this purpose, *see Finley*, 65 Nev. at 118; 120-21, 189 P.2d at 336, 337, we conclude that a writ of prohibition is warranted to prevent the district court from exceeding its jurisdiction. *See* NRS 34.320; *Smith*, 107 Nev. at 677, 818 P.2d at 851. Accordingly, we grant the petition and direct the clerk of the court to issue a writ of prohibition in Eighth Judicial District Court Docket Nos. T-13-149213-T and T-13-152073-T directing the district court to vacate its October 9, 2015, orders affirming the hearing master's recommendations and adopting the parties' stipulation to dissolve the TPOs nunc pro tunc.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²McMahon's writ petition does not challenge the district court's conclusion that the court could consider the motion under NRCP 60(b)(3), and thus, we do not address that issue in this order.

cc: Hon. Linda Marquis, District Judge, Family Court Division
Hofland & Tomsheck
Weide & Miller, Ltd.
Law Office of Karen H. Ross
Eighth District Court Clerk