

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM O. FOX,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; THE HONORABLE RONALD J.  
ISRAEL, DISTRICT JUDGE; AND  
DAVID BROWN,  
Respondents,  
and  
613 INVESTMENTS LLC,  
Real Party in Interest.

No. 72735

**FILED**

JUN 26 2017

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

*ORDER DENYING PETITION  
FOR WRIT OF CERTIORARI*

This is an original petition for a writ of certiorari challenging a district court order affirming a justice court decision granting summary eviction.

A writ of certiorari is available to correct a lower tribunal's judicial action if that tribunal exceeds its jurisdiction. See NRS 34.020(2); *Dangberg Holdings Nev., LLC v. Douglas Cty.*, 115 Nev. 129, 137-38, 978 P.2d 311, 316 (1999). Whether a petition for a writ of certiorari will be considered is within this court's discretion. See *Dangberg Holdings*, 115 Nev. at 138, 978 P.2d at 316.

Here, petitioner argues that the justice court exceeded its jurisdiction by reviewing the merits of his inhabitability defense to the

summary eviction and by requiring him to deposit more rent money with the court than the arrears amount listed in the summary eviction complaint. He further argues that the district court exceeded its jurisdiction by affirming those decisions on petitioner's appeal from the justice court action. Real party in interest disagrees. Having reviewed the petition and supporting documents, we conclude that our intervention by way of extraordinary writ relief is not warranted. *See id.*

When a summary eviction action is filed in justice court and the tenant files an answer, the justice court is to assess whether the tenant asserted a legal defense to the eviction. NRS 40.253(6). If the court determines that the tenant raised a proper legal defense, it is to deny summary eviction and hold further proceedings in the nature of an unlawful detainer action, but, if the court finds no such legal defense to the eviction was raised, it may issue a summary order evicting the tenant. *Id.*

Consistent with these statutory requirements, in the underlying case, the justice court properly exercised its authority to assess whether petitioner had properly raised an inhabitability defense, *see id.*, and in ultimately determining that, because petitioner had not deposited all of the rent he withheld with the justice court, he could not maintain an inhabitability defense to the summary eviction complaint. *See* NRS 118A.355(5) (providing that the defense of inhabitability is not available "unless the tenant has deposited the withheld rent" with the court); JCRLV 44(a) (same). Indeed, with regard to whether petitioner could maintain such a defense and whether the justice court properly required the provision of rents beyond the amounts listed in the initial complaint, the applicable rules contemplate multiple deposits of rent and indicate

that all withheld rent must be deposited with the court to maintain an inhabitability defense, not just the amounts listed in the initial summary eviction complaint. Compare JCRLV 44(a) (providing that the tenant must deposit “the withheld rent” and that “[t]he *deposit(s)* may be paid by cash, money order, [etc.]” (emphasis added) indicating the possibility of multiple deposits), with 44(b) (providing that, when filing the answer to the summary eviction complaint, if asserting inhabitability as a defense, the tenant “must deposit the *current* accrued withheld rent” (emphasis added)); see also NRS 118A.355(5) (placing no limit on the amount of withheld rent a tenant must deposit with the court to maintain an inhabitability defense).

Thus, for the reasons set forth above, petitioner’s arguments that the justice court exceeded its jurisdiction in the course of granting summary eviction to real party in interest lack merit. And it follows then, that because the justice court did not exceed its jurisdiction in its decisions, the district court did not exceed its jurisdiction in affirming those decisions. Accordingly, writ relief<sup>1</sup> is not warranted and we

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<sup>1</sup>We decline petitioner’s request in his reply to treat the petition as one for mandamus as mandamus relief is not appropriate in this case. The district court has final appellate review over justice court decisions such that, even if the district court makes a legal error in deciding the appeal, mandamus will not lie to correct that error. See *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 227-28, 88 P.3d 840, 843 (2004) (providing that “if a district court takes jurisdiction of a[ justice court] appeal and acts, its acts are not subject to review through a petition for a writ of mandamus”).

ORDER the petition DENIED.<sup>2</sup>

*Silver*, C.J.  
Silver

*Tao*, J.  
Tao

*Gibbons*, J.  
Gibbons

cc: David Brown, Justice of the Peace  
Hon. Ronald J. Israel, District Judge  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
Marquis Aurbach Coffing  
Eighth District Court Clerk

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<sup>2</sup>In light of our decision herein, we deny real party in interest's June 9, 2017, motion for a supersedeas bond. We also vacate the stay of the summary eviction order that this court entered on April 6, 2017.