

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RHODES RANCH ASSOCIATION, INC.,
A NEVADA CORPORATION,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
JOSEPH PELLECHIO, AN
INDIVIDUAL,
Real Party in Interest.

No. 73556

FILED

FEB 22 2018

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

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS*

This original petition for a writ of mandamus challenges a district court order denying petitioner's motion to dismiss a negligence action.

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). Writ relief is typically not available when the petitioner has a plain, speedy, and adequate remedy at law. *See* NRS 34.170; *Int'l Game Tech., Inc.*, 124 Nev. at 197, 179 P.3d at 558. And this court generally declines to consider writ petitions challenging orders denying motions to dismiss. *Beazer Homes Nev., Inc. v. Eighth Judicial Dist. Court*, 120 Nev. 575, 578–79, 97 P.3d 1132, 1134 (2004). Writ petitions

challenging the district court's denial of a motion to dismiss are only considered when there are no disputed factual issues and the dismissal was required pursuant to clear statutory authority, or when an important issue of law needs clarification. *Id.* Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *See Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).


Having considered the petition and supporting documents, we are not persuaded that our extraordinary and discretionary intervention is warranted at this time. *See Smith*, 107 Nev. at 677, 679, 818 P.2d at 851, 853. Petitioner is correct that when a complaint requires the interpretation, application, or enforcement of an association's covenants, conditions, and restrictions (CC&Rs), dismissal is required if the parties did not first submit to mediation, and a stay of the matter is improper. *See* NRS 38.310; *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 295, 183 P.3d 895, 899-900 (2008) (providing that under NRS 38.310, if the parties dispute the interpretation and enforcement of CC&Rs, they must mediate prior to bringing an action, and a complaint filed in violation of NRS 38.310 must be dismissed).

But based on our review of the existing record, it is not clear that the underlying complaint will require the interpretation, application, or enforcement of petitioner's CC&Rs, as the complaint appears to proceed against petitioner on a negligent hiring and/or respondeat superior theory, and at the very least, a factual dispute exists as to whether the petitioner's role in the underlying action created a duty to real party in interest. *See*

Beazer Homes, 120 Nev. at 579, 97 P.3d at 1134 (explaining that writ petitions challenging the denial of a motion to dismiss will only be considered when, as relevant here, “no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule”); *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1223–24, 1226-27, 925 P.2d 1175, 1179, 1181 (1996) (explaining that, when a property owner hires security personnel, it creates a “nondelegable duty to provide responsible security personnel,” supporting the employer/employee relationship required for negligent hiring and respondeat superior causes of action). Accordingly, we deny the petition. See NRAP 21(b)(1); *Smith*, 107 Nev. at 677, 818 P.2d at 851.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jerry A. Wiese, District Judge
Alverson Taylor Mortensen & Sanders
Ralph Porter & Associates, P.C.
Bremer, Whyte, Brown & O'Meara
Eighth District Court Clerk