

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOANNA KISHNER, DISTRICT
JUDGE,
Respondents,
and
NICO FENSKE,
Real Party in Interest.

No. 77158

FILED

NOV 06 2018

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

*ORDER DISMISSING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

This original petition for a writ of mandamus or prohibition challenges an October 4, 2018, written district court order directing petitioner Las Vegas Metropolitan Police Department (LVMPD) to accept and retain custody of real party in interest during a civil trial in which he was the defendant, and an October 10, 2018, oral district court ruling upholding the earlier order and also directing LVMPD to guard real party in interest during the trial. As directed, real party in interest filed an answer. In the answer, real party in interest seeks to dismiss this petition as moot, explaining that the trial has ended. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). LVMPD contends that, even though real party in interest has been returned to state custody, the petition should not be dismissed because it raises an issue of statewide importance that is capable of repetition, yet evading review.

Our review of the record raises serious concerns regarding the propriety of the district court's actions. Real party in interest was an

inmate housed within the lawful custody the Nevada Department of Corrections (NDOC). The district court ordered LVMPD to take custody of real party in interest for the duration of a civil trial when no statute authorized the district court to issue such an order; real party in interest was not under arrest by, or otherwise within the lawful jurisdiction of, LVMPD, and the court's order violated the rules and regulations of both NDOC and LVMPD.

Nonetheless, without approving the merits of the district court's order, we deem this petition moot. In "exceptional situations," a case will not be dismissed as moot when the challenged action is too short in duration to be fully litigated and a reasonable expectation exists that the same complaining party will again be subject to the same action. *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 161, 87 P.3d 521, 524 (2004). LVMPD has pointed to no other time when it has been ordered to house and guard a state inmate for a civil trial unrelated to conditions of confinement and has not otherwise demonstrated a reasonable expectation that the district court will again order it to do so. *See Clarke v. United States*, 915 F.2d 699, 701, 704 (D.C. Cir. 1990). As the capable-of-repetition-yet-evading-review doctrine therefore does not apply, we conclude that this petition is moot and hereby order it dismissed.

It is so ORDERED.



_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Joanna Kishner, District Judge
Marquis Aurbach Coffing
Pyatt Silvestri
Eighth District Court Clerk