IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WEST CHARLESTON LOFTS III, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND SAVWCL III, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE,
Respondents,
and
JOHN FARINA AND TINA FARINA, IN THEIR CAPACITIES AS CO-TRUSTEES OF THE FARINA LIVING TRUST; PAUL L. GARCELL AND PAMELA HERTZ, AS TRUSTEES OF THE PAUL L. GARCELL AND PAMELA HERTZ REVOCABLE FAMILY TRUST; STACEY L. HERTZ, AS TRUSTEE OF THE STACEY L. HERTZ REVOCABLE FAMILY TRUST AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MURRAY HERTZ; PATRICK DERMODY AND CLARA CARMEN DERMODY, AS INDIVIDUALS AND AS TRUSTEES OF THE PATRICK AND CLARA CARMEN DERMODY FAMILY TRUST; AND ROBERT RICHARDSON, INDIVIDUALLY AND AS TRUSTEE OF THE ROBERT S. RICHARDSON AND SAUNDRA RICHARDSON FAMILY TRUST,
Real Parties in Interest.

No. 74104

18-902464

ORDER DENYING PETITION

West Charleston Lofts III, LLC, and SAVWCL III, LLC (collectively "the Lofts"), petition for a writ of mandamus, or in the alternative, prohibition, challenging a district court order denying a motion to stay pending proceedings under NRS 38.221.

Real parties in interest John and Tina Farina threatened legal action against the Lofts relating to a failed real estate development in Las Vegas.[1] The Lofts filed a motion with the district court below to compel the Farinas to arbitrate the dispute in accordance with an alleged arbitration agreement, which the district court ultimately granted. However, not long after the Lofts filed that motion, the Farinas and the rest of the real parties in interest (collectively "the Investors") filed a lawsuit in California against the Lofts and other entities and individuals in connection with the failed development.

The Lofts then amended their motion to compel arbitration with respect to the rest of the Investors, and they filed a motion under NRS 38.221 requesting that the district court enter an order staying the California case on grounds that the court had ordered the Farinas to arbitrate and had not yet decided the motion to compel the others. The district court denied the motion to stay, concluding that NRS 38.221 does not allow it to stay proceedings in a California court. The Lofts then filed the instant writ petition requesting that this court direct the district court to enter the stay.

---

[1]We do not recount the facts except as necessary to our disposition.

The Lofts argue that the district court was required to grant the motion to stay the California case under the plain language of NRS 38.221. However, we must first decide whether to consider its petition.[2]

Whether to consider a writ petition is within this court's discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). The court may issue a writ of mandamus "to compel the performance of an act which the law especially enjoins as a duty resulting from an office." NRS 34.160. Similarly, the court may issue a writ of prohibition to "arrest[] the proceedings of any tribunal . . . or person exercising judicial functions, when such proceedings are without or in excess of the [court's] jurisdiction." NRS 34.320. The petitioner bears the burden of demonstrating that such extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Moreover, these writs will only issue where the petitioner does not have "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330.

Though an appeal from a final judgment generally constitutes an adequate remedy at law, this court "exercise[s] [its] discretion to intervene under circumstances of urgency or strong necessity, or when an important issue of law needs clarification and sound judicial economy and

---

[2]The Investors argue in their answer to the petition that the district court properly denied the motion to stay, but they also argue that the underlying order compelling the Farinas to arbitrate should be reversed. Because the Investors failed to file their own writ petition challenging that order, we decline to consider their argument on this point. *See High Noon at Arlington Ranch Homeowners Ass'n v. Eighth Judicial Dist. Court*, 133 Nev. ___, ___, 402 P.3d 639, 648 (2017) (noting that appellate courts will generally decline to award relief requested in an answer to a writ petition instead of an original writ petition).

administration favor the granting of the petition." *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 131 Nev. 865, 869-70, 358 P.3d 925, 928 (2015) (internal quotation marks omitted) (considering a writ petition because it raised important issues concerning constructional defect law, including whether a particular statute allowed for certain types of stays); *see Diaz v. Eighth Judicial Dist. Court*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000) (noting that a writ petition is appropriately considered when there is "a unique opportunity to define the precise parameters of [a] privilege conferred by a statute that this court has never interpreted" (alteration in original) (internal quotation marks omitted)).

Because we conclude that no court has interpreted NRS 38.221 to determine whether it requires district courts to enter orders staying proceedings in out-of-state cases, we choose to consider the merits of the Lofts' petition.

Substantively, the Lofts argue that the plain language of NRS 38.221 requires the district court to stay proceedings in foreign courts in certain circumstances.

Though their briefing both below and before us requested an order staying the California action, during oral argument the Lofts suggested that staying the case or proceeding would not entail commanding the California court to do anything; instead, it would operate as a stay on the parties. But parties cannot be stayed; only proceedings can. *See Stay, Black's Law Dictionary* (10th ed. 2014) (defining "stay" as "[t]he postponement or halting of a proceeding, judgment, or the like"). A request for an order preventing a person from doing something is properly termed an "injunction." *See Brunzell Constr. Co. v. Harrah's Club*, 81 Nev. 414, 420-31, 404 P.2d 902, 905-11 (1965) (properly evaluating an order to restrain a party from pursuing

an action in California under NRCP 65 and the law of injunctions). Before the district court, the Lofts filed both a motion to stay the California case as well as a motion to enjoin the parties from participating in that case, both of which were denied in separate orders. Only the order denying the motion to stay the California case was made the subject of this petition. Therefore, we decline to treat the instant petition as a request for an injunction.

Regarding their request to stay the California action, the Lofts argue that the district court must stay any judicial proceeding involving a claim that is 1) alleged to be subject to arbitration when a motion to compel arbitration is pending before the court, or 2) subject to arbitration when the court has ordered arbitration. The Lofts thus contend that because the district court had ordered the Farinas to arbitrate and had not yet ruled on the motion to compel the rest of the Investors, it should have entered an order staying the pending California case. The Investors counter that the plain language of NRS 38.221(5) requires litigants to file a motion to stay a pending action in the court in which that action is pending, which in this case is the California court.

NRS 38.221 enables "a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate" to file a motion to compel that person to arbitrate. NRS 38.221(1). "If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court." NRS 38.221(5). Moreover, if a final decision is pending on a motion to compel arbitration or if the court orders arbitration, "the court on just terms shall stay any judicial proceeding that involves a claim" that is alleged to be subject to or actually is subject to arbitration. NRS 38.221(6)-(7).

"This court reviews questions of statutory interpretation de novo." *Pawlik v. Shyang-Fenn Deng*, 134 Nev. ___, ___, 412 P.3d 68, 70-71 (2018). When a statute is facially clear, this court will not look beyond its plain language. *Id.* at ___, 412 P.3d at 71. If a statute is ambiguous—meaning it is subject to two or more reasonable interpretations—this court will look to the legislative history and interpret the statute "in light of the policy and spirit of the law." *Id.* (internal quotation marks omitted).

NRS 38.221(5) clearly states that, if a proceeding involving a claim referable to arbitration is pending in court, a motion filed under the statute—which necessarily includes any motion to stay judicial proceedings under NRS 38.221(6)-(7)—must be filed in *that* court.[3] But that does not mean that the Lofts should have filed a motion in a California court invoking NRS 38.221 as the Investors suggest; after all, state courts generally apply their own procedural rules, and California has its own provisions concerning motions to compel arbitration and the entry of stay orders. *See* Cal. Civ. Proc. Code §§ 1281.2, 1281.4; Restatement (Second) of Conflict of Laws § 122 (1971) ("A court usually applies its own local law rules prescribing how litigation shall be conducted . . . ."). Accordingly, reading the statute to require filing a motion under Nevada's Uniform Arbitration Act of 2000 in a California court produces an absurd result. *See Rural Tel. Co. v. Pub. Utils. Comm'n of Nev.*, 133 Nev. ___, ___, 398 P.3d 909, 911 (2017) ("[W]e must not . . . read [a

[3]It is worth noting that the plain language of NRS 38.221(6)-(7) simply requires the court to enter a stay; it does not require that a party file a motion requesting that the court enter it. However, even in the absence of such a requirement, the Uniform Arbitration Act of 2000 clearly contemplates such motions. *See* NRS 38.221 (entitled "Motion to stay or compel arbitration"); NRS 38.247(1)(b) ("An appeal may be taken from . . . [a]n order granting a motion to stay arbitration . . . .").

statute] in a way that produces absurd or unreasonable results." (internal quotation marks and alterations omitted)). Instead, the only reasonable interpretation of NRS 38.221 is that it applies only to actions in Nevada state courts, and it does not provide Nevada courts with the power to stay actions in other states. Under such an interpretation, the "any judicial proceeding" language of NRS 38.221(6)-(7) simply does not apply to proceedings in foreign jurisdictions.

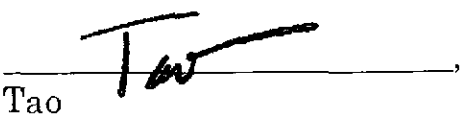
This interpretation is consistent with long-standing jurisprudence recognizing that courts have power to stay proceedings on their own dockets. *See Maheu v. Eighth Judicial Dist. Court*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936))). Moreover, it is generally recognized that courts in one state may not stay actions in the courts of other states. *See AVCO Corp. v. Interstate Sw., Ltd.*, 145 S.W.3d 257, 264 (Tex. App. 2004) ("Although a Texas court may use an anti-suit injunction to enjoin a party from pursuing litigation in a sister state, our courts have no authority to control the actions of foreign courts."); *Churchill Corp. v. Third Century, Inc.*, 578 A.2d 532, 539 (Pa. Super. Ct. 1990) ("In enjoining a foreign suit, the court does not proceed upon any claim to stay proceedings in the courts of another state or jurisdiction . . . ."); 1A C.J.S. Actions § 330 (2018) ("A court may, but need not, stay proceedings before it because of the pendency of an action in a court of another state or country, but cannot stay the proceedings in the other jurisdiction."); *see also Baker v. Gen. Motors Corp.*, 522 U.S. 222, 235 (1998) ("Orders commanding action or inaction have been denied enforcement in a sister State when they purported

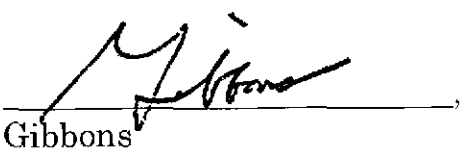
to accomplish an official act within the exclusive province of that other State or interfered with litigation over which the ordering State had no authority.").

Accordingly, we conclude that the district court properly denied the Lofts' motion to stay the California case. We therefore deny the Lofts' petition and remand this matter to the district court. We also vacate our stay entered on April 9, 2018, pending resolution of the petition.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Marquis Aurbach Coffing
Lee, Hernandez, Landrum & Carlson, APC
Eighth District Court Clerk