IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN SOLOMON,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE T. ARTHUR RITCHIE, JR., DISTRICT JUDGE,
Respondents,
and
DAWN M. SOLOMON,
Real Party in Interest.

No. 76107-COA

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR WRIT OF MANDAMUS, PROHIBITION, OR CERTIORARI

This is an original petition for a writ of mandamus, prohibition, or certiorari, challenging an order directing an answer in an action to divide property in a family law matter. Eighth Judicial District Court, Clark County; T. Arthur Ritchie, Jr., Judge.

Real party in interest Dawn M. Solomon commenced the underlying proceeding against petitioner Brian Solomon, seeking, as relevant here, divorce and division of several financial accounts and real property located in the United States, Mexico, and Canada. Brian moved to dismiss, and the parties' resulting disputes concerned whether the district court had personal jurisdiction over Brian and whether Dawn could pursue divorce in Nevada when the parties were involved in a divorce proceeding in Mexico that resulted in a divorce decree and an appeal, which

is apparently still pending. In a January 2018 order, the district court determined that the Mexican divorce decree precluded Dawn from pursuing a divorce in Nevada. But the district court also concluded that, insofar as the parties' owned real property in Nevada, it had personal jurisdiction over Brian to adjudicate the parties' interest in those properties. And as a result, the district court authorized Dawn to amend her complaint accordingly.

Dawn then amended her complaint to request division of both the Nevada real property and some of the financial accounts identified in her original complaint. Brian moved to dismiss, arguing, among other things, that the court lacked in rem jurisdiction over the financial accounts and did not otherwise have personal jurisdiction over him. Dawn opposed that motion, and in March 2018, the district court denied it and directed Brian to answer Dawn's amended complaint. This petition followed.

Extraordinary writ relief may be available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station; to control an arbitrary or capricious exercise of discretion; or to redress the district court's jurisdictional excesses. *See* NRS 34.020(2); NRS 34.160; NRS 34.320; *see also Salaiscooper v. Eighth Judicial Dist. Court*, 117 Nev. 892, 901, 34 P.3d 509, 515 (2001). Whether to entertain a petition for such relief is within this court's discretion and we will not do so when the petitioner has a plain, speedy, and adequate remedy at law. *See* NRS 34.020(2); NRS 34.170; NRS 34.330; *see also Salaiscooper*, 117 Nev. at 901, 34 P.3d at 515. But a petitioner may properly challenge an invalid exercise of personal jurisdiction by way of a petition for a writ of prohibition, as a plain, speedy, and adequate legal remedy is generally unavailable to correct such a decision. *See Viega GmbH v. Eighth Judicial*

Dist. Court, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014). And because Brian challenges the district court's assertion of personal jurisdiction over him, we exercise our discretion to consider his petition for a writ of prohibition. Thus, we do not address whether Brian's challenge to the district court's jurisdiction to divide the financial accounts presents a basis for a writ of mandamus or certiorari.

Initially, the January 2018 order is unclear insofar as it found that, based on the parties' real property in Nevada, the court had sufficient personal jurisdiction over Brian to divide that property. Indeed, the district court's focus on the real property being located in Nevada suggests that the court determined it had in rem jurisdiction over that property. *See Hanson v. Denckla*, 357 U.S. 235, 246 (1958) (recognizing that the presence of the subject property within the forum state provides the basis for in rem or quasi in rem jurisdiction). Yet because the district court expressly found that it had "personal jurisdiction over [Brian] as to the [subject] real properties," the court may have based its decision on the doctrine of specific personal jurisdiction. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (explaining that while general personal jurisdiction allows the court to hear "any and all claims against [the nonresident defendant]," specific personal jurisdiction only permits the court to hear "issues deriving from, or connected with, the very controversy that establishes jurisdiction" (internal quotation marks omitted)). But notwithstanding this ambiguity in the district court's order, to the extent the order deals with jurisdiction over the Nevada real property, Brian correctly concedes that the court had in rem or quasi in rem jurisdiction over that property. *See Hanson*, 357 U.S. at 246; *see also Shaffer v. Heitner*,

433 U.S. 186, 207-08 (1977) (holding that the exercise of in rem jurisdiction must be consistent with the minimum-contacts standard set forth in *Int'l Shoe Co. v. Wash.*, 326 U.S. 310 (1945), and explaining that the standard is generally satisfied where the dispute is based on competing claims to property located within the forum state).

Nevertheless, the parties extensively dispute whether the district court erred in concluding that it had jurisdiction to divide the financial accounts identified in Dawn's complaint. *See Viega*, 130 Nev. at 374, 328 P.3d at 1156 (explaining that personal jurisdiction is a legal issue that the appellate courts review de novo, even in the context of a writ petition). As discussed above, the district court's only express finding with regard to jurisdiction dealt with its authority to divide the parties' real property, although the court implicitly concluded that it had jurisdiction to divide their financial accounts insofar as it denied Brian's motions to dismiss in their entirety.

But insofar as the district court concluded that it could divide the financial accounts based on its in personam jurisdiction, the lack of findings in the court's order suggests that the court did not perform the necessary minimum-contacts analysis in reaching its decision. *See Int'l Shoe*, 326 U.S. 310, 316 (1945) (providing that personal jurisdiction requires minimum contacts between the defendant and the forum, such that "maintenance of the suit does not offend traditional notions of fair play and substantial justice" (internal quotation marks omitted); *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 698-99, 857 P.2d 740, 747-48 (1993) (stating the same). And even if the district court determined that it could divide the financial accounts based on its in rem/quasi in rem jurisdiction

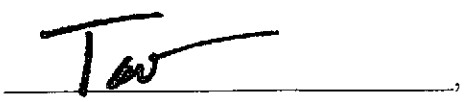
over those accounts, it was still required to apply the minimum-contacts standard. *See Shaffer*, 433 U.S. at, 206 (holding that the fictional presence of intangible personal property in a forum is insufficient, standing alone, to confer in rem/quasi in rem jurisdiction and holding that such assertions of jurisdiction must be evaluated pursuant to *International Shoe's* minimum-contacts standard); *Rush v. Savchuk*, 444 U.S. 320, 329-30 (1980) ("[T]he fictitious presence of [intangible personal property] in [the forum] does not, without more, provide a basis for concluding that there is *any* contact in the *International Shoe* sense between [the forum] and the [defendant]."). Moreover, the district court did not take any evidence regarding the facts necessary to establish jurisdiction, including those pertinent to the minimum-contacts standard. *See Trump*, 109 Nev. at 692-94, 857 P.2d at 743-45 (explaining the specific procedures and standards of proof that a plaintiff must meet to overcome a challenge to personal jurisdiction).

Under these circumstances, we conclude that Brian demonstrated that our extraordinary intervention is warranted, *see Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) ("Petitioners carry the burden of demonstrating that extraordinary relief is warranted."). Accordingly, we grant in part Brian's petition and direct the clerk of court to issue a writ of prohibition directing the district court to (1) vacate the March 8, 2018, order to the extent it required Brian to answer Dawn's amended complaint regarding the financial accounts and (2)

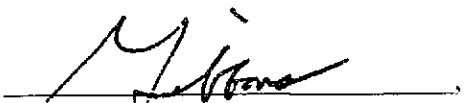
reevaluate, in a manner consistent with this order, whether it has jurisdiction to divide the parties' financial accounts.[1]

It is so ORDERED.

_____, A.C.J.
Douglas



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Ford & Friedman, LLC
Kainen Law Group
Eighth District Court Clerk

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[1]Insofar as Brian also seeks an extraordinary writ directing the district court to stay the underlying proceeding, we deny his request, as he may seek such relief from the district court in the first instance. *See Salaiscooper*, 117 Nev. at 901, 34 P.3d at 515 (providing that writs of mandamus, prohibition, and certiorari are generally unavailable when the petitioner has a plain, speedy, and adequate legal remedy); *see also Solomon v. Eighth Judicial Dist. Court*, Docket No. 76107 (Order Denying Motion for Stay, July 6, 2018) (denying Brian's separate motion for a temporary stay and rejecting his argument that seeking such relief from the district court in the first instance would be impracticable in light of case law abolishing the distinction between special and general appearances).