

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KAREN A. CONNOLLY,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SUSAN JOHNSON, DISTRICT JUDGE,

Respondents,

and

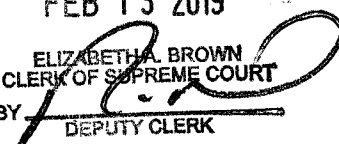
TERRY DWAYNE DIXON; AND THE
STATE OF NEVADA,

Real Parties in Interest.

No. 74422-COA

FILED

FEB 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus or, in the alternative, writ of prohibition, challenges an order of the district court denying a motion for excess attorney fees.

Karen A. Connolly was appointed to represent real party in interest Terry Dwayne Dixon in litigating his procedurally barred postconviction petition for a writ of habeas corpus. Connolly was paid for her work litigating the petition at the district court level, but the district court declined to pay her for any work she performed litigating the appeal. On December 6, 2018, we ordered respondent to file an answer addressing why this court should not grant the petition. Respondent's answer was timely received and filed.


A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v.*


Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus is the appropriate vehicle to challenge the district court's decision because appointed counsel has no other remedy. See NRS 34.170; *Digesti v. Third Judicial Dist. Court*, 109 Nev. 532, 535, 853 P.2d 118, 120 (1993). However, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. See *Poulos v. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also *State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). "Petitioner[] carr[ies] the burden of demonstrating that extraordinary relief is warranted." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).


The district court denied Connolly's motion on the grounds that she failed to meet the factors set forth in *Lueck v. State*, 99 Nev. 717, 720, 669 P.2d 719, 721 (1983), and she provided the court no analysis or guidance as to why she was seeking excess attorney fees for her appellate work. The district court applied the wrong standard to determine the reasonableness of Connolly's fees. The *Lueck* factors were supplanted by NRS 7.125(4), see *Lueck*, 99 Nev. at 719 n.3, 669 P.2d at 720 n.3, which the district court quoted but did not apply. The district court also applied a novel standard to determine whether Connolly had met her pleading burden: that used to analyze an award of attorney fees and costs to the prevailing party in a civil action. See *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121 345 P.3d 1049, 1054 (2015), *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998), and *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349-50 455 P.2d 31, 33 (1969). Finally, the district court failed to engage in any meaningful factfinding to

determine the reasonableness of Connolly's fees.¹ Connolly was questioned only as to two specific charges (3,300 copies made and 15 minutes to review a remittitur), but the district court made no findings as to which of Connolly's charges were unreasonable. We therefore conclude the district court abused its discretion by denying Connolly's motion for excess attorney fees in its entirety. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to reconsider Connolly's motion for excess attorney fees under the standard set forth in NRS 7.125(4).²


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

¹The court's concern that Connolly was previously paid for work at the district court level is not a reason to deny Connolly payment for appellate work.

²Connolly sought a writ of prohibition to preclude the district court from denying her motion on the ground that she did not seek prior authorization. Nothing in the record before this court suggests this was a reason for the district court's denial of Connolly's petition. We therefore conclude Connolly has failed to demonstrate prohibition relief is warranted. See NRS 34.320.

We also deny Connolly's request to order the matter be transferred to a different district court judge.

cc: Hon. Susan Johnson, District Judge
Karen A. Connolly, Ltd.
Clark County District Attorney
Law Office of Lisa Rasmussen
The Kice Law Group, LLC
Eighth District Court Clerk