

IN THE SUPREME COURT OF THE STATE OF NEVADA

CUTHBERT E.A. MACK,

No. 37010

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, AND THE  
HONORABLE STEPHEN L. HUFFAKER,  
DISTRICT JUDGE,

**FILED**

JAN 18 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Rehak*  
CHIEF DEPUTY CLERK

Respondents,

and

BONANZA VILLAGE HOMEOWNERS  
ASSOCIATION,

Real Party in Interest.

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of prohibition challenges the district court's determination that it did not have jurisdiction over petitioner's complaint because of a related writ petition pending in this court. An answer was ordered and received from the real party in interest.

Petitioner owns a home in the Bonanza Village subdivision in Las Vegas. On November 9, 1998, the Bonanza Village Homeowner's Association (HOA) entered into an agreement with the City of Las Vegas (City) to maintain a security wall that was being constructed by the City. Petitioner contends that when he purchased his property, there was no mention of an HOA in records relating to his property. Therefore, he maintains that the HOA, without authority, obligated him to pay for the upkeep of the security wall without his consent.

On June 12, 2000, petitioner filed a complaint against the HOA and its officers, claiming that the HOA did not have the authority to enter into the agreement with the

City on petitioner's behalf and that he was not obligated to abide by the rules of the organization because he purchased his property before the HOA was created. Petitioner also filed a motion to determine the rights and liabilities of the parties. The documents submitted to this court indicate that petitioner filed a motion for declaratory relief, a restraining order and attorney's fees.

On October 2, 2000, in a minute order, the district court determined that it did not have jurisdiction over petitioner's case because of a writ petition pending in this court, Mack v. District Court, Docket No. 36091.

Petitioner then filed the instant petition for a writ of prohibition, requesting that we direct the district court to consider his complaint. In the alternative, petitioner requests that we issue a writ declaring that the agreement between the HOA and the City is void and that he has no obligation to abide by the HOA rules.

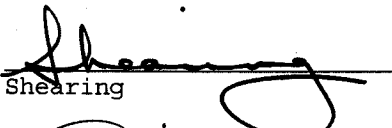
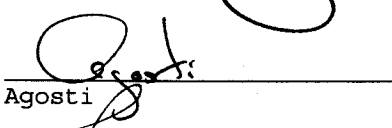
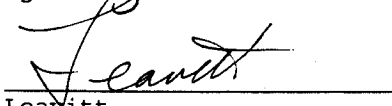
Unlike an appeal, a writ petition filed in this court invokes our original jurisdiction, and does not divest the district court of jurisdiction. See Nev. Const. art. 6, § 4 (providing that this court has original jurisdiction over petitions for writ of prohibition). In addition, even an appeal divests the district court of jurisdiction only over the case in which the appeal is taken, and even then, only over matters concerning the order appealed from. See, e.g., Bongiovi v. Bongiovi, 94 Nev. 321, 579 P.2d 1246 (1978). We therefore conclude that the district court erred in ruling that it lacked jurisdiction to consider petitioner's complaint.

Petitioner specifically seeks a writ of prohibition. This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial

functions, when such proceedings are in excess of the jurisdiction of the district court. See NRS 34.320. In contrast, 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. See NRS 34.160. Here, the district court failed to exercise its jurisdiction when jurisdiction was proper. We therefore conclude that mandamus is the appropriate remedy, and construe this petition as one for mandamus. See City of Sparks v. District Court, 112 Nev. 952, 920 P.2d 1014 (1996) (construing a petition for a writ of prohibition as one for mandamus where mandamus was the appropriate remedy); Roberts v. District Court, 43 Nev. 332, 185 P. 1067 (1920) (holding that mandamus will lie to compel a district court to exercise jurisdiction where it has erroneously determined that it lacked jurisdiction).

Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus compelling the district court to exercise jurisdiction over petitioner's complaint.

It is so ORDERED.

 _____ Shearing	J.
 _____ Agosti	J.
 _____ Leavitt	J.

cc: Hon. Stephen L. Huffaker, District Judge  
David Lee Phillips  
Cuthbert E.A. Mack  
Clark County Clerk