

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY P. KLUGMAN, AS TRUSTEE OF  
THE KLUGMAN 1995 TRUST,

Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF NYE;  
AND THE HONORABLE ROBERT W.  
LANE, DISTRICT JUDGE,

Respondents,

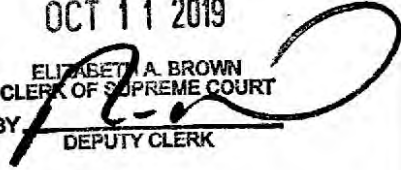
and

LISA KLUGMAN GODWIN,  
Real Party in Interest.

No. 79676-COA

**FILED**

OCT 11 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER GRANTING PETITION FOR WRIT OF MANDAMUS*

This original, emergency petition for a writ of mandamus seeks an order compelling the district court to cancel notices of lis pendens. Real party in interest has timely filed an answer, as directed.

On September 6, 2019, the district court entered an order dismissing all claims in the underlying action except two: one alleging intentional infliction of emotional distress and the other seeking declaratory relief. With regard to the dismissed claims, the court noted that real party in interest could file an appropriate pleading in a related trust case. As for the two remaining claims, the court stated that real party in interest had 10 days to file an amended complaint pleading them with more particularity. The district court refused, however, to cancel the notices of lis pendens that real party in interest has placed on properties owned by a trust of which petitioner is the trustee and she and petitioner are beneficiaries. Petitioner asks this court to intervene by directing the district court to cancel the notices of lis pendens, pointing out that neither



of the remaining claims—for intentional infliction of emotional distress and for declaratory relief—seek to quiet title or otherwise involve an alleged right to the properties.


As acknowledged by the parties, lis pendens may be recorded upon the filing of a complaint that “affect[s] the title or possession of real property.” NRS 14.010(1). *See also Weddell v. H2O, Inc.*, 128 Nev. 94, 106, 271 P.3d 743, 751 (2012) (“It is fundamental to the filing and recordation of a lis pendens that the action involve some legal interest in the challenged real property.” (quoting *In re Bradshaw*, 315 B.R. 875, 888 (Bankr. D. Nev. 2004))); *Levinson v. Eighth Judicial Dist. Court*, 109 Nev. 747, 750, 857 P.2d 18, 20 (1993) (“[L]is pendens are not appropriate instruments for use in promoting recoveries in actions for personal or money judgments; rather, their office is to prevent the transfer or loss of real property which is the subject of dispute in the action that provides the basis for the lis pendens.”). If, after a hearing, the party who records the notices is unable to demonstrate that the action affects title or possession to real property, among other things, then the district court must order the lis pendens cancelled. NRS 14.015(5).

In the original complaint, neither remaining claim sought to resolve an asserted interest in real property. The emotional distress claim sought monetary damages, and the declaratory relief claim sought “a judicial determination of rights and duties of the parties” and monetary damages. In her answer to the writ petition, real party in interest argues that she has a claim of entitlement to the properties as beneficiary of the trust, but she does not show that any of the claims pending in the case below assert any such entitlement. She further argues that her amended complaint, which she did not provide to this court, asserts claims for

declaratory relief in the form of an order directing that petitioner be removed as trustee if he is adjudged liable for breach of fiduciary duty or convicted of a felony. This request for declaratory relief, also, does not directly affect title or possession to real property. Accordingly, the underlying complaint cannot support the recorded lis pendens, and the district court manifestly abused its discretion in refusing to cancel them under NRS 14.015(5), such that writ relief is warranted. NRS 34.160; *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (mandamus will issue when the respondent has a clear legal duty to act and manifestly abuses its discretion). Nothing in this order precludes real party in interest from recording lis pendens on the properties based on a complaint properly contesting title or possession thereto or from otherwise seeking to protect any beneficiary interests in the related trust action, if appropriate. Thus, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to comply with NRS 14.015(5) by ordering the cancellation of the notices of lis pendens in this case.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Robert W. Lane, District Judge  
Clear Counsel Law Group  
Law Office of Thomas S. Shaddix  
Nye County Clerk