

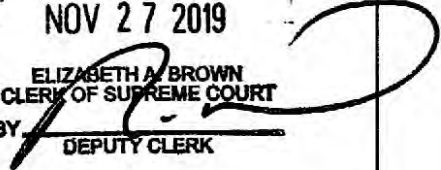
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
AND ESTATE OF ROGER ESTEP, A
PROTECTED PERSON,
Petitioner,
vs.
THE NINTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
DOUGLAS; AND THE HONORABLE
NATHAN TOD YOUNG, DISTRICT
JUDGE,
Respondents,
and
DOUGLAS COUNTY PUBLIC
GUARDIAN'S OFFICE; AND NICOLE
THOMAS, PUBLIC GUARDIAN,
Real Parties in Interest.

No. 78987-COA

FILED

NOV 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER GRANTING PETITION
FOR WRIT OF MANDAMUS*

This original petition for a writ of mandamus or prohibition challenges district court orders granting temporary letters of guardianship and extending that guardianship.

Real parties in interest the Douglas County Public Guardian's Office and the Douglas County Public Guardian, Nicole Thomas, petitioned for a temporary, followed by permanent, guardianship of the person and estate of petitioner Roger Estep. On April 26, 2019, the district court entered an ex parte order granting real parties in interest temporary letters of guardianship and setting a hearing for May 21, 2019, to address whether

to extend the temporary guardianship. That hearing took place as scheduled, with Estep appearing pro se. On that same day, the district court entered orders extending the temporary guardianship, appointing Estep counsel, and setting a hearing for June 18, 2019, to address whether to make the temporary guardianship permanent.

On June 18, 2019, Estep petitioned for a writ of mandamus or prohibition, arguing that the district court failed to follow certain procedural rules applicable to guardianship petitions and that the order granting real parties in interest temporary letters of guardianship should therefore be set aside. The parties subsequently filed status reports and supporting documentation, which demonstrated that the district court stayed the underlying proceeding at the June 18 hearing, such that Estep's petition remains ripe for our review.

This court has original jurisdiction to grant writs of mandamus and prohibition, and the issuance of such extraordinary relief is solely within this court's discretion. See Nev. Const. art. 6, § 4; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition may be warranted when a district court acts without or in excess of its jurisdiction. NRS 34.320; *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012). Such extraordinary relief is generally only available, however, where the petitioner has no plain, speedy, and adequate

remedy at law. NRS 34.170; NRS 34.330; *D.R. Horton*, 123 Nev. at 474, 168 P.3d at 736. Based on the circumstances presented here, we conclude that our review of this matter by way of an extraordinary writ proceeding is proper, *see In re Guardianship of Wittler*, 135 Nev., Adv. Op. 31, 445 P.3d 852, 854 (2019) (suggesting that writ review was available to challenge an extended temporary guardianship order under circumstances similar to those presented in this matter), and thus we address the merits of Estep's petition.

Estep argues that the district court violated NRS 159.0485(1) and NRS 159.0523(5), which required the court to, as relevant here, appoint him counsel when the guardianship petition was filed and hold a hearing within 10 days of granting real parties in interest temporary letters of guardianship to determine whether an extension was warranted. In their status report, real parties in interest acknowledge that the district court failed to comply with NRS 159.0485(1) and NRS 159.0523(5) and essentially concede that, given those deficiencies, they are amenable to having the underlying proceeding dismissed so that a new guardianship matter can be commenced with proceedings conducted in accordance with the requirements of those statutes. As a result, and because Estep does not seek any other relief, we grant his petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate the orders granting real parties in interest's request for temporary letters of guardianship and extending the temporary guardianship and to dismiss the

underlying proceeding.¹ The writ of mandamus shall further instruct the district court that its order effectuating this directive shall not be entered sooner than 14 days after issuance of the notice in lieu of remittitur in this matter.²

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Because we grant Estep's request for a writ of mandamus, we deny his alternative request for a writ of prohibition.

²Given our disposition of this petition, which does not preclude real parties in interest from commencing a new guardianship proceeding, we need not address Estep's remaining arguments.

³Insofar as Estep seeks to strike certain documents attached to real parties in interest's November 13, 2019, status report, we deny his request. *Cf.* NRAP 21(a)(4) (providing that a petitioner's appendix to a writ petition shall contain "any other original document that may be essential to understand the matters set forth in the petition"). Nevertheless, we direct the clerk of this court to detach, and file under seal, pages 40-71 of real parties in interest's November 13 status report. *See* NRS 159.328(1)(m) (explaining that protected persons have the right to "[m]aintain privacy and confidentiality in personal matters").

cc: Hon. Nathan Tod Young, District Judge
Washoe Legal Services
Michael Smiley Rowe
Douglas County Clerk