

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRACE CURAZZATO,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,
Respondents,

And

PALACE STATION HOTEL & CASINO,
A NEVADA CORPORATION,
Real Party in Interest.

No. 37302

FILED

MAR 13 2002

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is a petition for a writ of mandamus seeking reinstatement of petitioner's case, which the district court dismissed under NRCP 41(e) for failure to bring her matter to trial within five years.

"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, or to control an arbitrary or capricious exercise of discretion. Mandamus is not available where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of the law. Mandamus is an extraordinary remedy, and the decision as to whether a petition will be entertained lies within the sound discretion of this court."¹

¹Margold v. District Court, 109 Nev. 804, 805-06, 858 P.2d 33, 34-35 (1993) (quoting Brewery Arts Ctr. v. State Bd. Examiners, 108 Nev. 1050, 1053, 843 P.2d 369, 372 (1992)).

Petitioner filed her writ petition on January 17, 2001, the day the five-year limitation period expired. It therefore appears that a direct appeal from the district court's dismissal is an adequate remedy at law barring writ relief.

In this connection, however, we note the following. We have delineated two exceptions to the operation of the five-year mandatory dismissal provision of NRCP 41(e). The first exception excludes from the five-year dismissal period the time during which a court-ordered stay prevents the parties from taking a case to trial.² Secondly, we concluded that "the time during which a medical malpractice complaint is pending before a screening panel may not be included in calculating the five-year mandatory dismissal period under NRCP 41(e)."³

Ms. Curazzato retained counsel to prosecute an action against real party in interest for personal injuries. After the filing of her complaint on January 17, 1996, in district court, her counsel attempted to transfer the matter to another firm, but the substitution documents were not timely filed. Thereafter, the matter was reassigned within the Eighth Judicial District to two different judicial departments following the re-alignment of the court's overall docket in 1997. No action was taken in the matter until May of 2000, when Curazzato retained new counsel. That counsel then filed a motion for preferential trial setting, which was

²See Boren v. City of North Las Vegas, 98 Nev. 5, 638 P.2d 404 (1982).


³Baker v. Noback, 112 Nev. 1106, 1111-12, 922 P.2d 1201, 1204 (1996).


granted. However, the district court was not able to convene trial within the five-year prescriptive period.

Because the circumstances of petitioner's dismissal do not fall within any of the enumerated exceptions mentioned above, it appears that the district court properly dismissed the case under the mandatory dismissal provisions of NRCP 41(e). Thus, having considered the petition on file herein, we are not satisfied that this court's intervention is warranted. Accordingly, we deny the petition.

It is so ORDERED.


_____, C.J.
Maupin


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Mark R. Denton, District Judge
Kenneth G. Frizzell III
Pyatt & Silvestri
Clark County Clerk