

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ANTHONY JONES,

No. 37008

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; THE HONORABLE RONALD  
D. PARRAGUIRRE, DISTRICT JUDGE;  
AND ELIZABETH A. LA MACCHIA,  
SPECIAL MASTER,

**FILED**

DEC 12 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

Respondents,

and

MICHELE D. HAMMOND,

Real Party in Interest.

No. 37436

CHRISTOPHER ANTHONY JONES,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
RONALD D. PARRAGUIRRE,  
DISTRICT JUDGE,

Respondents,

and

MICHELE D. HAMMOND,

Real Party in Interest.

01-20872

ORDER GRANTING PETITIONS FOR WRIT OF MANDAMUS

Docket No. 37008 is an original proper person petition for a writ of mandamus challenging a district court order that appointed a special master in a tort case. The underlying tort case seeks an accounting and alleges facts in support of conversion, among other causes of action. Docket No. 37436 is an original proper person petition for a writ of mandamus challenging the district court's refusal, in the same underlying tort case, to entertain petitioner's various pre-trial motions, including his NRCP 15 motion to amend his complaint.

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,<sup>1</sup> or to control an arbitrary or capricious exercise of discretion.<sup>2</sup> A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law.<sup>3</sup> Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered.<sup>4</sup>

We have reviewed both petitions, the response to our August 23, 2001 order calling for an answer in Docket No. 37008, and the district court's docket entries. It is apparent from these documents that the district court failed to follow Ray v. Stecher<sup>5</sup> when it appointed Elizabeth La Macchia to serve as an NRCP 53 special master in the underlying proceeding. As stated in Stecher, "NRCP 53(c) contemplates a formal order of reference which would specify or limit the powers of the [special]

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<sup>1</sup>NRS 34.160.

<sup>2</sup>See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>3</sup>NRS 34.170.

<sup>4</sup>Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

<sup>5</sup>9 Nev. 304, 383 P.2d 372 (1963).

master."<sup>6</sup> Here, the district court never entered a formal, written order of reference that specifies and limits the powers of La Macchia. Rather, on September 13, 2000, the district court entered a minute order appointing La Macchia, an Eighth Judicial District Court "overflow" law clerk, as the special master.<sup>7</sup>

The minute entries further show that, subsequent to the September 13, 2000 appointment of La Macchia as the special master, the district court refused to entertain various motions filed by petitioner, including a motion to amend the complaint. A March 29, 2001 minute entry expressly directs that the parties in the case "refer all future matters to Ms. La Macchia," and indicates that La Macchia was to "oversee the production of all discovery." These minute entries show that the district court made a virtual blanket delegation of all pre-trial matters to La Macchia, in violation of NRCP 53(b).<sup>8</sup>

We conclude that the district court's actions warrant this court's intervention by extraordinary writ.<sup>9</sup> Accordingly, we grant the petitions and direct the clerk of this court to issue a writ of mandamus instructing the district court to (1) immediately enter a written order vacating its previous appointment of La Macchia to serve as a special master, and (2) within forty-five days of issuance of the writ, consider and

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<sup>6</sup>Id. at 309, 383 P.2d at 375.

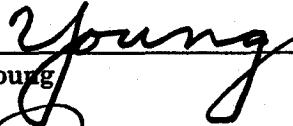
<sup>7</sup>While we need not decide the issue to resolve this petition, we harbor doubts as to whether it is proper for a district court to appoint a court employee to serve as an NRCP 53 special master.

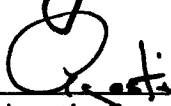
<sup>8</sup>See, e.g., Southern Trust v. K & B Door Co., 104 Nev. 564, 763 P.2d 353 (1988) (holding that a district court was not authorized to refer all issues set forth in pleadings in a deed of trust superiority dispute to a special master); Russell v. Thompson, 96 Nev. 830, 834, 619 P.2d 537, 539 (1980) (stating that a virtual blanket delegation to a special master approaches an unallowable abdication by a jurist of his constitutional responsibilities and duties).


<sup>9</sup>See Russell, 96 Nev. at 832-33, 619 P.2d at 538 (stating that mandamus is an appropriate remedy if it is found that the trial judge exceeded his authority by appointing a special master).

rule upon the merits of all of petitioner's outstanding pre-trial motions that to date have not been fully considered upon their merits by the district court.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Ronald D. Parraguirre, District Judge  
Elizabeth A. La Macchia, Special Master  
Clark County District Attorney  
Christopher Anthony Jones  
Michele D. Hammond  
Clark County Clerk