

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASHOE COUNTY SCHOOL DISTRICT, AND
ITS EMPLOYEES AND AGENTS,

No. 37684

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE, AND THE
HONORABLE PETER I. BREEN, DISTRICT
JUDGE,

FILED

JUL 11 2001

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

Respondents,

and

LINDA B. SHAW, INDIVIDUALLY, AND
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF ALISON LYNN SHAW,
DECEASED; LINDA B. SHAW AS
GUARDIAN AD LITEM OF THE MINOR
CHILD, CORINNE SHAW; AND WILLIAM
J. SHAW, INDIVIDUALLY,

Real Parties in Interest.

ORDER DENYING PETITION FOR WRIT OF

MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges an order of the district court denying petitioners' NRCP 12(b)(5) motion to dismiss a tort action, related to a homicide.¹

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,² or to control an arbitrary or capricious exercise of discretion.³ This court may issue a writ of prohibition to arrest the proceedings of a district

¹The district court, having considered matters outside the pleadings, properly treated the motion to dismiss as a motion for summary judgment. See NRCP 12(b).

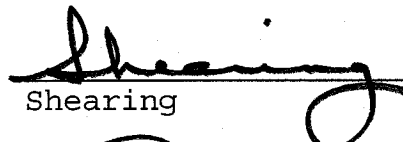
²See NRS 34.160.

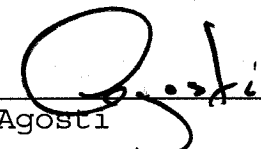
³See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court.⁴ However, neither a writ of mandamus nor a writ of prohibition will issue if petitioner has a plain, speedy and adequate remedy in the ordinary course of law.⁵ Furthermore, both mandamus and prohibition are extraordinary remedies, and it is within the discretion of this court to determine if a petition will be considered.⁶

We have considered the petition and the answer, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. Accordingly, we deny the petition.⁷

It is so ORDERED.⁸


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

cc: Hon. Peter I. Breen, District Judge
Walther Key Maupin Oats Cox Klaich & LeGoy
Calvin R.X. Dunlap
Washoe County Clerk

⁴See NRS 34.320.

⁵See NRS 34.170 (mandamus); NRS 34.330 (prohibition).

⁶See, e.g., Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

⁷See NRAP 21(b); see also Smith, 113 Nev. 1343, 950 P.2d 280.

⁸In light of our disposition of this writ petition, we deny as moot petitioners' request for a stay of the district court proceedings.