

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SOUTHBAY CONSTRUCTION, LLC,
D/B/A COMPASS CONSTRUCTION,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
CARLI LYNN KIERNY, DISTRICT
JUDGE,

Respondents,

and

JOSE BARRANCO; LAURITA MEDINA-
CHAVEZ; AND JOSE BARRANCO AS
ADMINISTRATRIX OF THE ESTATE
OF ENRIQUE BARRANCO,
DECEASED,
Real Parties in Interest.

No. 82796-COA

FILED

OCT 20 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying a motion to dismiss in a personal injury suit based on the expiration of the statute of limitations and inapplicability of fictitious-party replacement under NRCP 10(d) to preserve the statute of limitations on the claim.

Having considered the petition and its supporting documents, we are not persuaded that our extraordinary and discretionary intervention is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991) ("Mandamus is a proper remedy to compel performance of a judicial act when there is no plain, speedy, and


adequate remedy at law in order to compel performance of an act which the law requires as a duty resulting from office.”). Writ relief is appropriate to seek dismissal of a case based on the expiration of the statute of limitations when irrefutable facts establish that the complaint is untimely. See *Kushnir v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 41, ___ P.3d ___, ___ (Ct. App. Aug. 5, 2021) (granting writ petition when “pursuant to clear authority under a statute or rule, the district court [wa]s obligated to dismiss [the] action” (alterations in original) (internal quotation marks omitted)); see also *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (observing that writ relief is typically not afforded to denials of motions to dismiss unless “no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule”); NRS 34.160 (providing guidance for when appellate courts may issue a writ).


Petitioner contends that the district court manifestly abused its discretion or committed clear legal error when it disregarded controlling authority in denying petitioner’s motion to dismiss pursuant to the statute of limitations. Specifically, petitioner argues that the district court improperly concluded that under NRCP 10(d) petitioner could be properly substituted as the actual defendant in place of a fictitious Roe, despite the failure to satisfy the necessary factors under *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), *abrogated on other grounds by Costello v. Casler*, 127 Nev. 436, 440 n.4, 254 P.3d 631, 634 n.4 (2011).¹

¹In *Costello*, the Nevada Supreme Court disavowed the dicta in *Nurenberger* as it related to NRCP 15(c), which is not at issue in this writ petition.

However, after our review, we conclude that the district court did not clearly err in determining that the three factors under *Nurenberger* were satisfied, thereby permitting petitioner to be substituted in as a defendant. Further, the district court also did not err in finding that real parties in interest were not dilatory in ascertaining petitioner's identity and pursuing their claims against petitioner once its involvement became known. Accordingly, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carli Lynn Kierny, District Judge
Resnick & Louis, P.C./Las Vegas
Mainor Wirth
Eighth District Court Clerk