IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WOODLANDS COMMUNITY ASSOCIATION, A NEVADA NON-PROFIT CORPORATION; GOTHIC LANDSCAPING, INC., A FOREIGN CORPORATION; AND GOTHIC GROUNDS MANAGEMENT, INC.,
Petitioners,
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
COLEMAN-TOLL, LLC, A FOREIGN CORPORATION,
Real Party in Interest.

No. 83123-COA

FILED

DEC 23 2021

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

This original petition for a writ of mandamus, or in the alternative, writ of prohibition,[1] challenges a district court order denying a motion to dismiss cross-claims based on the failure to bring the action to trial within the mandatory five-year deadline under NRCP 41(e)(2)(B).

[1]We note that "[p]rohibition is a proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioners bear the burden of demonstrating that such extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); NRAP 21(a)(3) (providing requirements for petitions). Petitioners failed to cogently argue why a writ of prohibition would be appropriate here.

Having considered the petition and its supporting documents, we are not persuaded that our extraordinary and discretionary intervention is warranted. *See Pan*, 120 Nev. at 228, 88 P.3d at 844; *Smith*, 107 Nev. at 677, 818 P.2d at 851 ("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 typically not afforded to denials of motions to dismiss, but such relief is appropriate when "no factual dispute exists and the district court is obligated to dismiss the action pursuant to clear authority under a statute or rule." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also* NRS 34.160 (providing guidance regarding when appellate courts may issue a writ); *Kushnir v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 41, 495 P.3d 137, 140 (Ct. App. 2021) (concluding that writ relief was appropriate to seek dismissal of case based on the expiration of the statute of limitations when irrefutable facts established that the complaint was untimely).

Petitioners contend that the district court was required to dismiss real party in interest's cross-claims pursuant to clear authority under NRCP 41(e)(2)(B)'s mandatory five-year deadline, as the deadline had expired and none of the tolling events recognized by the supreme court were applicable. However, after our review, we conclude that the district court did not clearly err in determining that real party in interest has time remaining to pursue its cross-claims against petitioners under NRCP 41(e)(4)(B)'s three-year appeal extension, which became applicable when this court reversed real party in interest's summary judgment in 2016 and issued remittitur. *See Monroe v. Columbia Sunrise Hosp. & Med. Ctr.*, 123 Nev. 96, 102, 158 P.3d 1008, 1011-12 (2007) (explaining that the reversal of

a summary judgment order on appeal "creates a new three-year time limit to bring the action to trial"); *Bell & Gossett Co. v. Oak Grove Inv'rs*, 108 Nev. 958, 961-62, 843 P.2d 351, 353 (1992) (indicating that the commencement of the new three-year period begins after the remittitur is filed with the district court).

This three-year period was further extended pursuant to the district court's March 2017 stay order as well as the administrative orders issued by the Chief Judge of the Eighth Judicial District Court in response to the public health crisis caused by the COVID-19 pandemic. *See Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982) (holding that any period during which the parties are prevented from bringing a case to trial due to a stay order must be excluded when conducting a Rule 41(e) computation); Eighth Judicial District Court Administrative Order 20-01 (March 13, 2020); Eighth Judicial District Court Administrative Order 21-04 (June 4, 2021). Therefore, we conclude that the district court did not clearly err in determining that the three-year deadline as set forth in NRCP 41(e)(4)(B) has not yet expired. Accordingly, we

ORDER the petition DENIED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Mark R. Denton, District Judge
Skane Mills LLP
Plante Lebovic
Eighth District Court Clerk