

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TESSIE ELMA ALMARIO,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DAWN THRONE, DISTRICT JUDGE,
Respondents,
and
SHERYL ATTERBERG, ON BEHALF
OF HER ADULT WARD RODNEY
WILKINSON,
Real Parties in Interest.

No. 83668-COA

FILED

MAR 30 2022

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

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

This original petition for mandamus or prohibition relief challenges a district court order denying summary judgment.

Petitioner Tessie Almario and real party in interest Rodney Wilkinson were divorced by way of a stipulated decree of divorce entered in February 2020. As relevant here, in January 2021, real party in interest Sheryl Atterberg, on behalf of Rodney Wilkinson, sought to set aside the decree, asserting that the decree unequally divided the parties' community property, and that Tessie knew Rodney suffered from dementia at the time the decree was entered, such that she committed fraud upon the court. Over Tessie's opposition, the district court set the matter for an evidentiary hearing to determine whether Rodney lacked capacity to enter into the stipulated decree and what Tessie knew about Rodney's capacity at the time the decree was entered.


Tessie later filed a motion for summary judgment asserting that Sheryl and Rodney should be precluded from arguing that he lacked capacity to enter into the stipulated decree because, during discovery, Tessie learned that the issue of Rodney's competency at the time the decree was entered was previously litigated in a separate action in North Dakota. The district court denied Tessie's motion for summary judgment, concluding that the issue of Rodney's competency was not fully litigated in the North Dakota case and that issues relating to Tessie's fiduciary duty to Rodney, her alleged fraud, and her alleged undue influence upon Rodney had not yet been resolved. This petition followed.

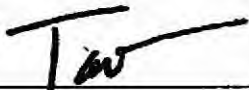
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). This court has discretion as to whether to entertain a petition for extraordinary relief and will not do so when the petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170; NRS 34.330; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 475, 168 P.3d 731, 737 (2007). Moreover, this court generally will not exercise its discretion to consider writ petitions challenging orders denying motions for summary judgment. *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997). Petitioner bears the burden of

demonstrating that extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition and supporting documents filed in this matter, we are not persuaded that this court's intervention by way of extraordinary relief is warranted at this time. *Id.* Accordingly, we decline to exercise our discretion to address the merits of this matter, and we deny the petition. See NRAP 21(b)(1); *D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Dawn Throne, District Judge, Family Court Division
Hofland & Tomscheck
James Kwon, LLC
Eighth District Court Clerk