

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOLENE BROWN,

No. 37811

Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF NYE, AND THE
HONORABLE JOHN P. DAVIS, DISTRICT
JUDGE,

FILED

JUL 11 2001

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

Respondents,

and

SHARON G. ("ANGEL") MOORE,

Real Party in Interest.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges an order of the district court denying petitioner's NRCP 56 motion for summary judgment in a defamation action.

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

¹See NRS 34.160.

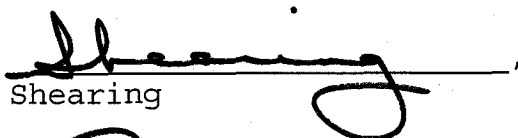
²See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

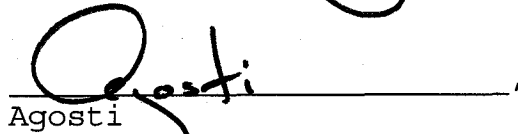
³See NRS 34.170.

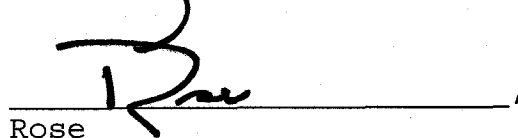
⁴See, e.g., Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

Having considered the petition and the answer, along with the exhibits attached to each, we conclude that they raise factual issues, which are inappropriate for this court to resolve.⁵ Furthermore, it would appear that motions in limine and the Nevada Rules of Evidence could be utilized to assure that inadmissible evidence would be excluded at trial. Therefore, we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. Accordingly, we deny the petition.⁶

It is so ORDERED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

cc: Hon. John P. Davis, District Judge
Robert A. Massi, Ltd.
Kossack Law Offices
Nye County Clerk

⁵See Round Hill Gen. Imp. Dist., 97 Nev. 601, 637 P.2d 534.

⁶See NRAP 21(b); see also Smith, 113 Nev. 1343, 950 P.2d 280.