

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD A. GAMMICK, ESQ.,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
JAMES W. HARDESTY, DISTRICT
JUDGE,
Respondents,
and
TRINA MCCARTHY, A/K/A TRINA
HALL; JAMES MCCARTHY; ERIC
BERNARD SANDERS; AND DANYELL
SANDERS,
Real Parties in Interest.

No. 37905

FILED

APR 03 2002

JANE T. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of prohibition requesting that this court prevent the district court from entertaining an action for declaratory relief while criminal actions are pending in the justice's court.

Petitioner alleges that the justice's court has jurisdiction to decide constitutional issues and a writ of prohibition is appropriate to prevent the district court from entertaining actions for declaratory relief while the criminal actions which are the subject of the relief sought are pending in the justice's court. The declaratory relief action alleged that both Trina McCarthy and Eric Sanders ("McCarthy and Sanders") were the subject of misdemeanor criminal complaints for violations of temporary protective orders ("TPOs") issued against them without providing them any notice. McCarthy and Sanders argued that NRS 33.020 and 33.030(1)(d) are unconstitutional because the statutes

authorize the issuance of a TPO without providing notice to the defendant. In addition, the statutes authorize the issuance of a TPO with no articulated standard of proof. McCarthy and Sanders also claimed that the TPOs are void and unenforceable as unconstitutional because they delegate judicial powers to a master.

A writ of prohibition arrests the proceedings of any tribunal when such proceedings are without or in excess of the tribunal's jurisdiction.¹ Original petitions for extraordinary writs are addressed to the sound discretion of this court.² A writ of prohibition may issue only where there is no plain, speedy, and adequate remedy at law.³

Pursuant to this court's decision in Salaiscooper v. District Court,⁴ the justice's court has express authority to consider constitutional issues in misdemeanor cases.⁵ Further, courts will not entertain a declaratory judgment action if another action is pending in which the same individuals are parties and the same issues may be adjudicated.⁶ Here, the justice's court is authorized to consider the constitutionality of NRS 33.020 and 33.030(1)(d). Therefore, the district court is without

¹NRS 34.320.

²State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

³See NRS 34.330; NRAP 21; see also Nev. Const. art. 6, §§ 4, 6.

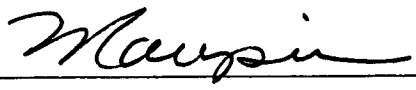
⁴117 Nev. ___, ___ P.3d ___ (Adv. Op. No. 72, November 15, 2001).

⁵Id.

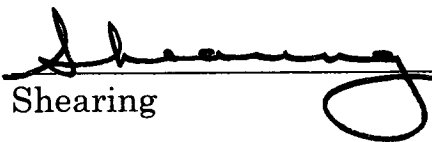
⁶Public Service Commission v. District Court, 107 Nev. 680, 684, 818 P.2d 396, 399 (1991).

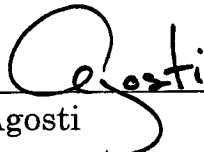
jurisdiction to hear the declaratory relief action because the real parties in interest must seek relief through the justice's court. Accordingly, we


ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION precluding the district court from exercising jurisdiction over the declaratory relief action.⁷



_____, C.J.
Maupin



_____, J.
Young


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Becker

⁷Further, we vacate the stay imposed by this court's order on June 13, 2001.

cc: Hon. James W. Hardesty, District Judge
Washoe County District Attorney
Washoe County Public Defender
Washoe District Court Clerk