

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVA OLVERA,
Appellant,

vs.

JOSE OLVERA,
Respondent.

No. 38233

FLOYD ATCHISON,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE T.
ARTHUR RITCHIE, JR., DISTRICT
JUDGE, FAMILY COURT DIVISION,
Respondents,

and
JEAN ATCHISON,
Real Party in Interest.

No. 39249

FILED

MAY 23 2002

WINNETTE W. HAYES
CLERK OF SUPREME COURT
J. Richards

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR
PROHIBITION IN DOCKET NO. 39249, AND DENYING MOTION TO
CONSOLIDATE AND MOTION FOR STAY

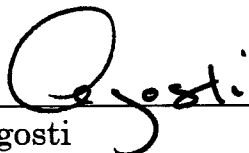
This is an appeal (Docket No. 38233) from a district court order concerning the post-divorce division of military retirement and disability benefits, and an original petition for a writ of mandamus, or in the alternative, prohibition (Docket No. 39249) seeking to prevent the district court from entering an order concerning the post-divorce division of military retirement and disability benefits. On February 27, 2002, petitioner Floyd Atchison filed a motion to consolidate his petition in Docket No. 39249 with the appeal in Docket No. 38233, and to stay the district court proceedings in Docket No. 39249 pending resolution of the writ petition.


A writ of mandamus may be issued 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.¹ A writ of prohibition, in turn, is the "proper remedy to restrain a district [court] from exercising a judicial function without or in excess of its jurisdiction."² Either writ will only issue where "there is not a plain, speedy and adequate remedy in the ordinary course of law."³

On April 19, 2002, the district court entered a written order that resolves the issues concerning petitioner's military pension and disability benefits. The notice of entry of order was served by mail on April 22, 2002. An order that changes the rights and liabilities of the parties growing out of the final judgment is appealable as a special order after final judgment.⁴ Accordingly, we conclude that extraordinary relief is not warranted, and we deny the petition in Docket No. 39249. In light of this order, we deny as moot the motion to consolidate and the motion for stay.

It is so ORDERED.


_____, J.
Agosti


_____, J.
Rose


_____, J.
Leavitt

¹See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

²Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

³NRS 34.170; NRS 34.330.

⁴Wilkinson v. Wilkinson, 73 Nev. 143, 311 P.2d 735 (1957).

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Law Office of Marshal S. Willick, PC
Radford J. Smith
Christensen & Sondgeroth, Chtd.
Clark County Clerk