

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY GRAY,
Petitioner,

vs.

THE SEVENTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WHITE
PINE, AND THE HONORABLE DAN L.
PAPEZ, DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 39331

FILED

APR 10 2002

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is a proper person petition for a writ of mandamus. Petitioner seeks to compel the district court clerk to file several documents submitted by him that relate to an appeal he wishes to take from a district court order affirming a justice's court order. In addition, petitioner asks this court to direct the district court to grant his motion for reconsideration and permit him to file a brief in support of his appeal from the justice's court order.

While we take this opportunity to remind the district court clerk of her duty to file all documents submitted to her that are in the proper form,¹ we decline to grant extraordinary relief in this instance

¹See Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995); Whitman v. Whitman, 108 Nev. 949, 840 P.2d 1232 (1992) (holding that district court clerk has no authority to return documents submitted for filing; instead, clerk must stamp documents that cannot be immediately filed "received," and must maintain them in record); Donoho v. District Court, 108 Nev. 1027, 842 P.2d 731 (1992) (holding that district court clerk has duty to file documents and to keep accurate record of proceedings).

because it would be futile to do so.² Specifically, this court lacks jurisdiction over an appeal in an action originating in justice's court.³ In addition, appellant has an adequate remedy at law in the form of a small claims action against the proper defendants in the proper justice's court.⁴

Accordingly, we

ORDER the petition DENIED.⁵

Maupin, C.J.
Maupin

Agosti, J.
Agosti

Leavitt, J.
Leavitt

²See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991) (providing that whether to grant extraordinary relief is discretionary).

³See Nev. Const. art. 6, § 6; Tripp v. City of Sparks, 92 Nev. 362, 550 P.2d 419 (1976).

⁴See NRS 34.170 (providing that writ relief is unavailable if petitioner has an adequate remedy at law).

⁵We conclude that petitioner has demonstrated good cause to waive the filing fee, see NRAP 21(e), and so no filing fee is due. Although petitioner was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him.

cc: Hon. Dan L. Papez, District Judge
Attorney General/Carson City
White Pine County District Attorney
Tony Gray
White Pine County Clerk