

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH V. SHERLOCK,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
ROBERT E. GASTON, DISTRICT
JUDGE, FAMILY COURT DIVISION,
Respondents,
and
LAN HOANG SHERLOCK,
Real Party in Interest.

No. 39636

FILED

APR 08 2003

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is a petition for a writ of mandamus. Petitioner Joseph Sherlock requests this court to direct the district court to vacate its order refusing to hear this case. Sherlock further asks this court to enter judgment finding his 1979 Nevada marriage to Lan Hoang Sherlock (Hoang), real party in interest, void ab initio and forever void. Hoang filed for divorce in the Superior Court of California on January 31, 2002. On February 13, 2002, Sherlock filed a petition in the Clark County, Nevada district court for annulment, a complaint for declaratory relief, and an alternative complaint for divorce. Thereafter, Sherlock filed a motion for summary judgment in the district court. The district court held that it would not hear the case because Hoang first filed her action in California and because of the parties' long-term residence in California. The Superior Court of California postponed hearing the action. However, the Superior Court of California indicated its willingness to hear the action,

and, if necessary, determine whether the parties' marriage is valid after this court considers Sherlock's writ of mandamus.

"Under NRS 34.160, this court may issue a writ of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust or station."¹ A writ of mandamus is an extraordinary remedy.² Generally, this court will only issue a writ of mandamus if "there is not a plain, speedy and adequate remedy in the ordinary course of law."³ "The burden on the petitioner is a heavy one."⁴ This court has discretion whether to issue a writ of mandamus⁵ and even if mandamus is available, this court is not obligated to issue it.⁶

The district court properly deferred to the California court because of the parties' long-term residence in California and the fact that Hoang filed her divorce action in California first. Further, the Superior Court of California indicated its willingness to hear the divorce action. Therefore, Sherlock has failed to meet his heavy burden of persuading this

¹Lowe Enterprises v. Dist. Ct., 118 Nev. __, __, 40 P.3d 405, 407 (2002).

²Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

³Lowe Enterprises, 118 Nev. at __, 40 P.3d at 407 (quoting NRS 34.170).

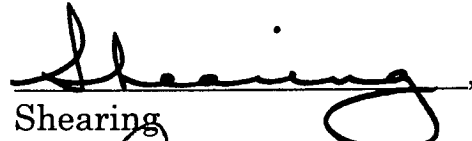
⁴Poulos, 98 Nev. at 455, 652 P.2d at 1178; see also Bottorff v. O'Donnell, 96 Nev. 606, 607-08, 614 P.2d 7, 8 (1980).


⁵Brewery Arts Ctr. v. State Bd. Examiners, 108 Nev. 1050, 1053, 843 P.2d 369, 372 (1992).


⁶Mineral County v. State, Dept. of Conserv., 117 Nev. 235, 243, 20 P.3d 800, 805 (2001).

court that he does not have an adequate remedy in the Superior Court of California.⁷ Accordingly, we

ORDER the petition DENIED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Robert E. Gaston, District Judge,
Family Court Division
Michael R. Pontoni
Law Offices of Israel L. Kunin, P.C.
Clark County Clerk

⁷See Poulos, 98 Nev. at 455, 652 P.2d at 1178.