

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM KENNETH TOMPKINS, II,
AS A CONSERVATOR OF THE
PERSON AND ESTATE OF JUDY
TOMPKINS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
MARQUIS & AURBACH, AND TERRY
A. COFFING,
Real Parties in Interest.

No. 40291

FILED

JUN 04 2003

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

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order interpreting SCR 155 (contingency fees) in the context of a post-decree divorce proceeding, and remanding to the state bar's fee dispute arbitration program. We directed the real parties in interest to respond to the petition, and they filed a timely answer.

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 Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered.⁴ This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court.⁵ A petition for a writ of prohibition is addressed to the sound discretion of this court.⁶ Further, such a writ may issue only when there is no plain, speedy, and adequate remedy at law.⁷

Having reviewed the petition and answer, we are not persuaded that our intervention by way of extraordinary relief is warranted at this time. In particular, we note that the district court's

¹NRS 34.160.

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

³NRS 34.170.

⁴Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

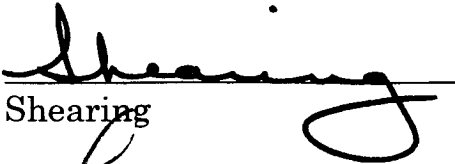
⁵NRS 34.320.

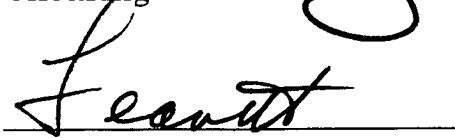
⁶Smith, 107 Nev. at 677, 818 P.2d at 851.

⁷NRS 34.330.

order remanded the matter to the fee dispute arbitration program. If petitioner is aggrieved by the ultimate result, then he may challenge it at that time. Accordingly, we

ORDER the petition DENIED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Mark R. Denton, District Judge
John Peter Lee Ltd.
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Clark County Clerk