

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANN NYGREN, BRUCE NYGREN, AND
LYNN NYGREN ("RESIDUAL HEIRS"),
Appellants,

vs.

SCOTT NYGREN, AND THE ESTATE
OF RAY HUNTER NYGREN, BY AND
THROUGH THE ADMINISTRATOR,
DAVID WIDMER, CPA,
Respondents.

No. 40258

FILED

NOV 18 2002

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

No. 40476

ANN NYGREN, BRUCE NYGREN AND
LYNN NYGREN,
Petitioners,

vs.

THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CHURCHILL, AND THE HONORABLE
DAVID A. HUFF, DISTRICT JUDGE,
Respondents,
and
SCOTT LEWIS NYGREN,
Real Party in Interest.

ORDER DENYING PETITION FOR
ALTERNATIVE WRIT OF PROHIBITION (DOCKET NO. 40476) AND
MOTION FOR STAY (DOCKET NOS. 40258/40476)

This appeal (Docket No. 40258) and this original petition for an alternative writ of prohibition (Docket No. 40476) arise from a district court proceeding concerning the estate of Ray Hunter Nygren. The appeal is from the May 1, 2002 order that, among other things, distributed property from the estate, and the August 21, 2002 order that granted respondent's motion to amend the May 2002 order as it pertained to estate expenses. The August order also directed appellants (collectively the "residual heirs") to pay specific estate expenses. The petition seeks an

alternative writ of prohibition directing the district court to vacate the August 21, 2002 order. In the appeal and the writ petition, the residual heirs seek a stay of the district court orders pending resolution of the appeal or the writ petition.

In compliance with NRAP 8(a), the residual heirs first sought a stay in the district court on June 21, 2002. The district court denied the motion, and the court advised the residual heirs that they could file a notice of lis pendens regarding the real property.

Under NRAP 8(c), this court considers the following factors in determining whether to issue a stay: (1) whether the object of the appeal will be defeated if the stay is denied; (2) whether appellants will suffer irreparable or serious injury if the stay is denied; (3) whether respondents will suffer irreparable or serious injury if the stay is granted; and (4) whether appellants are likely to prevail on the merits in the appeal. After reviewing the motion, we conclude that the residual heirs have failed to demonstrate that these factors militate in favor of a stay. Accordingly, we deny the motion for stay in Docket Nos. 40258 and 40476.

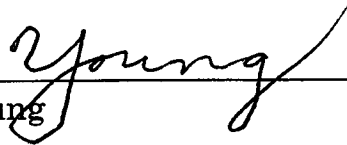
As for the writ petition, a writ of prohibition is the proper remedy to restrain a district court from exercising a judicial function without or in excess of its jurisdiction.¹ The writ may be issued only where "there is not a plain, speedy and adequate remedy in the ordinary course of law."² An appeal is generally an adequate and speedy remedy


¹NRS 34.320; Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

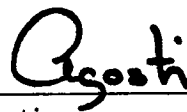
²NRS 34.330.

that precludes relief.³ Additionally, the residual heirs have not demonstrated that our intervention is warranted at this time. Accordingly, we deny the petition.⁴

It is so ORDERED.


_____, C.J.
Young


_____, J.
Rose


_____, J.
Agosti

cc: Hon. David A. Huff, District Judge
R. Clay Hendrix
Weule, Broyles & Mondo, LLP
Hale Lane Peek Dennison Howard & Anderson/Reno
Law Office of Kenneth V. Ward
Mackedon & McCormick
Churchill County Clerk

³See Guerin v. Guerin, 114 Nev. 127, 953 P.2d 716 (1998), abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

⁴See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.