

IN THE SUPREME COURT OF THE STATE OF NEVADA

NOEL A. GAGE AND GAGE & GAGE,
LLP,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE LEE
A. GATES, DISTRICT JUDGE,

Respondents,

and

MICHAEL DALEY, SHAWN DALEY,
JOSEPH L. BENSON, AND BENSON,
BERTALDO & BAKER, CHTD.,
Real Parties in Interest.

No. 40638

FILED

JAN 08 2003

JANETTE M. COOK
CLERK OF SUPREME COURT

J. Richards

ORDER DENYING PETITION FOR A WRIT OF MANDAMUS,
CERTIORARI OR PROHIBITION

This petition for a writ of mandamus, certiorari or prohibition challenges a district court order adjudicating an attorney's lien in the underlying personal injury action and awarding \$11,600 as reasonable attorney fees. We may issue a writ of mandamus to compel the district court to perform a required act or to control an arbitrary or capricious

exercise of discretion,¹ or a writ of certiorari or prohibition to arrest proceedings that exceed an inferior court's jurisdiction.² Having reviewed the petition and supporting documents, we conclude that extraordinary relief is not warranted.

Petitioners have not demonstrated that the district court acted without jurisdiction. The court clearly had both statutory and incidental jurisdiction to adjudicate petitioners' lien upon their motion.³

Petitioners also have not demonstrated that the district court either failed to perform a required act or duty, or acted arbitrarily or capriciously. The court fulfilled its duty by adjudicating the lien under NRS 18.015 upon petitioners' motion. Petitioners' lien was for the amount of any fee agreed upon by the attorney and client, and in the absence of an agreement, for a reasonable fee for the services the attorney rendered for the client.⁴ Although there apparently was a contingent fee agreement, petitioners' failure to include a copy precludes any review of the document and its terms. The district court evidently applied quantum meruit principles in substituting a reasonable value for the agreed-upon

¹NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


²NRS 34.020 (certiorari); NRS 34.320 (prohibition).

³NRS 18.015(4); Gordon v. Stewart, 74 Nev. 115, 118, 324 P.2d 234, 236 (1958); Earl v. Las Vegas Auto Parts, 73 Nev. 58, 307 P.2d 781 (1957).

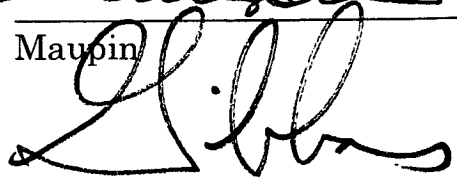
⁴NRS 18.015(1).

contingency fee, and in so doing, considered the amount of time petitioners spent on the case, what they accomplished and what the hourly rate should be since the agreement apparently did not specify an hourly rate. Petitioners have not demonstrated that the district court acted arbitrarily or capriciously by awarding them \$11,600 for 58 hours' work at \$200 per hour as their reasonable fee. Accordingly, we deny the petition.

It is so ORDERED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Beckley, Singleton, Chtd./Las Vegas
Benson, Bertoldo & Baker, Chtd.
Clark County Clerk