

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEPSI COLA BOTTLING GROUP,  
D/B/A PEPSI BOTTLING GROUP,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
ALLAN R. EARL, DISTRICT JUDGE,  
Respondents,  
and  
ALAN DESOMER,  
Real Party in Interest.

No. 40875

FILED

OCT 07 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 that denied a motion to dismiss or for summary judgment. 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,<sup>1</sup> or to control an arbitrary or capricious exercise of discretion.<sup>2</sup> A writ of prohibition may be issued to compel government bodies or officials to cease performing acts beyond their legal authority.<sup>3</sup> Mandamus or prohibition will not issue, however, if petitioner has a plain,

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<sup>1</sup>See NRS 34.160.


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


<sup>3</sup>NRS 34.320; Ashokan v. State, Dep't of Ins., 109 Nev. 662, 856 P.2d 244 (1993).


speedy and adequate remedy in the ordinary course of law.<sup>4</sup> And whether a petition will be entertained is entirely within the discretion of this court.<sup>5</sup> Generally, this court does not consider writ petitions challenging district court orders that deny motions to dismiss or summary judgment, unless no disputed factual issues exist, and pursuant to clear authority under a statute or rule, the district court is obligated to dismiss the action.<sup>6</sup>

We have considered this petition and answer, and we are not satisfied that our intervention by way of extraordinary relief is warranted at this time. Accordingly, we deny the petition.<sup>7</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Maupin

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<sup>4</sup>NRS 34.170; NRS 34.330.

<sup>5</sup>Poulos 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).

<sup>6</sup>See Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

<sup>7</sup>See NRAP 21(b).

cc: Hon. Allan R. Earl, District Judge  
Rawlings Olson Cannon Gormley & Desruisseaux  
Mainor Harris  
Clark County Clerk