

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUCK WORLD, INC., A NEVADA CORPORATION; MARINE TECH, INC., A NEVADA CORPORATION; AUTO MARINE WAREHOUSE, INC., A NEVADA CORPORATION; AND DWIGHT PERSINGER AND LANAI PERSINGER, HUSBAND AND WIFE, Petitioners,

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

BANK OF AMERICA, N.A., A NATIONAL BANKING ASSOCIATION, Real Party in Interest.

No. 41053

FILED

MAR 11 2003

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

ORDER DENYING PETITION FOR WRIT OF PROHIBITION OR MANDAMUS AND DENYING EMERGENCY MOTION FOR STAY

Through this petition for a writ of prohibition or mandamus, petitioners seek an order directing Judge Mark R. Denton to (1) take no further action in the underlying lawsuit, pending resolution of the appeal that has been filed (No. 40783), and (2) strike the amended complaint and amended writ of possession that were filed after petitioners filed their notice of appeal. On March 6, 2003, the district court stayed the underlying action until March 17, 2003. Petitioners move to extend the district court's stay until this petition is resolved. We have considered the writ petition, appendix and motion, and we conclude that the requested relief is not warranted.

A writ of prohibition is available to arrest proceedings that exceed the district court's jurisdiction,¹ while a writ of mandamus is available to compel the district court to perform a required act,² or to control an arbitrary or capricious exercise of discretion.³ Petitions for extraordinary relief are addressed to this court's sound discretion, and generally may only issue when there is no plain, speedy and adequate remedy at law.⁴

Here, writ relief does not appear to be warranted because petitioners' notice of appeal did not divest the district court of jurisdiction. Although NRAP 3A(b)(2) (and possibly NRAP 3A(b)(3)) authorizes petitioners' interlocutory appeal from the district court's December 27, 2002 order, Bank of America timely filed its motion to alter or amend the order on January 3, 2003, six days before petitioners filed their notice of appeal. NRAP 4(a)(2) provides that a notice of appeal filed before the formal disposition of a motion to alter or amend shall have no effect. Thus, it appears that the district court retained, and still retains, jurisdiction.⁵ (And it also appears that this court lacks jurisdiction over

¹NRS 34.320 (prohibition).

²NRS 34.160 (mandamus).

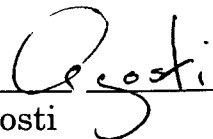
³Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


⁴NRS 34.170; NRS 34.330.


⁵Petitioners assert only the filing of the notice of appeal as a basis for relief. They have not argued and we have not considered whether Greene v. District Court, 115 Nev. 391, 990 P.2d 184 (1999), precluded the district court from allowing Bank of America to amend its complaint.

the appeal, No. 40783.⁶) We therefore deny the writ petition. Because our disposition of the writ petition renders the motion to extend the district court's stay moot, we deny the emergency stay motion as well.

It is so ORDERED.


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Becker

cc: Hon. Mark R. Denton, District Judge
Spilotro & Kulla
Poli, Ball & Shively
Clark County Clerk

⁶We note that if the district court's February 19, 2003 order formally resolved the motion to alter or amend, petitioners may file an amended notice of appeal in Docket No. 40783 within the time prescribed by NRAP 4(a)(2).