

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA STATE CONTRACTORS
BOARD,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JENNIFER TOGLIATTI, DISTRICT
JUDGE,
Respondents,
and
PROFESSIONAL STAR
CONSTRUCTION, INC.,
Real Party in Interest.

No. 41127

FILED

SEP 19 2008

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This petition for a writ of mandamus challenges a district court order denying petitioner's motion to dismiss and seeks to prohibit the district court from ruling on a matter over which petitioner alleges it lacks jurisdiction.¹ We have reviewed the petition, and we conclude that our intervention is not warranted. We generally decline to exercise our discretion to consider writ petitions challenging district court orders denying motions to dismiss, and petitioner has not established that this case fits firmly within an exception to this policy.² Although petitioner

¹A writ of prohibition is more appropriately sought to arrest proceedings that exceed the district court's jurisdiction. NRS 34.320.

²Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997) (reaffirming this court's general policy, but acknowledging rare exceptions when no factual disputes exist and the district court is obligated to dismiss an action under clear authority).

asserts that the district court lacked jurisdiction over the real party in interest's petition for judicial review because it was untimely filed and the court was clearly obligated to grant the motion to dismiss, petitioner failed to establish the absence of disputed factual issues. Indeed, petitioner did not include in its supporting documents its motion to dismiss, the real party in interest's opposition, petitioner's reply or a transcript of the hearing on the motion. The amended administrative decision and order at issue is sufficiently conditional to suggest there may be a question whether it is a final order triggering NRS 233B.130(2)(c)'s thirty-day period for filing a petition for judicial review. Under these circumstances, petitioner's right to appeal any adverse final decision constitutes a plain, speedy and adequate remedy that precludes extraordinary relief.³ We therefore

ORDER the petition DENIED.⁴


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

³See NRS 34.170 (mandamus); NRS 34.330 (prohibition); Karow v. Mitchell, 110 Nev. 958, 878 P.2d 978 (1994) (noting that an appeal is generally an adequate remedy).

⁴See NRAP 21(b).

cc: Hon. Jennifer Togliatti, District Judge
Carolyn M. Broussard
Moran & Associates
Clark County Clerk