

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEAN SHARON COLEMAN,
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

ANN PETTY,
Real Party in Interest.

No. 41547

FILED

JUL 02 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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 allowed the real party in interest to amend her answer to assert an omitted compulsory counterclaim, after losing in mandatory court-annexed arbitration and requesting a trial de novo, without strict compliance with EDCR 2.30. The petition also challenges the district court's scheduling of a trial setting date, despite the parties' failure to complete NRCP 16.1's requirements, and EDCR 1.90 and 2.60's scheduling requirements. Finally, the petition requests that we schedule oral argument and stay the underlying proceedings pending the petition's resolution.

A writ of mandamus may issue to compel the district court to perform a required act,¹ or to control an arbitrary or capricious exercise of discretion,² and a writ of prohibition may issue to arrest proceedings that exceed the district court's jurisdiction.³ An extraordinary writ is generally only available when there is no plain, speedy and adequate remedy at law,⁴ and the decision whether to grant a writ petition is discretionary.⁵

We have reviewed the petition and supporting documents, and we conclude that our intervention by extraordinary writ is not warranted. Petitioner has adequate remedies. As the plaintiff in the underlying action, it is petitioner's duty to stimulate the NRCP 16.1 process, not the defendant's or the court's.⁶ And if petitioner is aggrieved by the final

¹NRS 34.160.

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

³NRS 34.320.

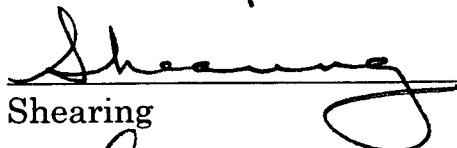
⁴NRS 34.170 (mandamus); NRS 34.330 (prohibition).


⁵Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851-52 (1991).


⁶See NRCP 16.1(e)(1) (authorizing defendant's dismissal if the mandatory discovery meeting is not timely held after service of process); NRCP 16.1(e)(2) (authorizing defendant's dismissal if the plaintiff does not timely file a case conference report after service of process); Morgan v. Las Vegas Sands, Inc., 118 Nev. ___, 43 P.3d 1036 (2002) (emphasizing that it is the plaintiff's duty, after a trial de novo request has been filed, to stimulate the NRCP 16.1 process, if necessary, and move the matter to trial within NRCP 41(e)'s five-year limitation).

judgment, she may appeal.⁷ Accordingly, we deny the petition,⁸ and we deny as moot the request for oral argument and a stay.

It is so ORDERED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Jennifer Togliatti, District Judge
G. Dallas Horton & Associates
Pico & Mitchell
Burris, Thomas & Springberg
William C. Turner & Associates
Clark County Clerk

⁷NRAP 3A.

⁸See NRAP 21(b); Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 647-48 n.1, 5 P.3d 569, 570 n.1 (2000) (noting that an appeal is generally an adequate remedy).