

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION,
Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR CARSON CITY, AND THE
HONORABLE MICHAEL R. GRIFFIN,
DISTRICT JUDGE,

Respondents,

and

WILLIAM SCHULZ; SANDRA
MCGOWAN; DIANA MCKILLIP A/K/A
BETH TIESZEN; SHARON MILLER;
GLENDA SCHULZ; RAYMOND M.
SCHULZ AND IRENE E. SCHULZ, AS
CO-TRUSTEES OF THE SCHULZ
REVOCABLE TRUST DATED
SEPTEMBER 9, 1999; JOSEPHINE S.
JONES, AS TRUSTEE OF THE
JOSEPHINE S. JONES 1999
REVOCABLE TRUST DATED
JANUARY 20, 1999; ALICE S.
BENNETT, AS TRUSTEE OF THE
ALICE S. BENNETT REVOCABLE
TRUST DATED AUGUST 31, 2000;
HELEN S. GIFFORD, AS TRUSTEE OF
THE HELEN S. GIFFORD 2000
REVOCABLE TRUST DATED
FEBRUARY 17, 2000; AND SCHULZ
INVESTMENTS,
Real Parties in Interest.

No. 47361

FILED

NOV 05 2007

DAVID M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION OR
MANDAMUS

This is an original petition for a writ of prohibition or mandamus challenging a district court order denying a motion to dismiss an inverse condemnation action.

In this petition, the State of Nevada, on relation of its Department of Transportation (NDOT), seeks our arrest of inverse condemnation proceedings brought below by the real parties in interest (landowners).¹ In the underlying action, the landowners sought just compensation for impairments of easement access rights allegedly sustained after NDOT constructed a barrier rail dividing opposing lanes of rural traffic on a portion of U.S. Highway 50 between Carson City and Lake Tahoe.²

NDOT contends that the district court should have dismissed the action because the landowners failed to file administrative claims with NDOT for damages, a statutory precondition, under NRS 408.497, to the landowners' suit. In denying NDOT's motion to dismiss, the district court

¹A writ of prohibition may issue to arrest performance of an act or order outside the jurisdiction of the district court. Houston Gen. Ins. Co. v. District Court, 94 Nev. 247, 248, 578 P.2d 750, 751 (1978). A writ of mandamus is likewise available "to compel the performance of an act which the law . . . [requires] as a duty resulting from an office, trust or station," or to control an arbitrary or capricious exercise of discretion. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Writs of prohibition and mandamus are both extraordinary remedies, and this court has discretion whether to consider these petitions. State of Nevada v. Dist. Ct. (Ducharm), 118 Nev. 609, 614, 55 P.3d 420, 423 (2002); Houston Gen. Ins. Co., 94 Nev. at 248-49, 578 P.2d at 751.

²Because the parties are familiar with the facts of this case, we recite only those facts necessary to the disposition of this petition.

concluded that NRS 408.497 is unconstitutional and that the landowners need not comply with a constitutionally infirm statute.

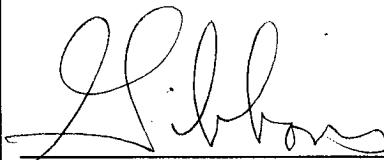
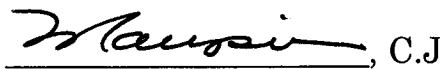
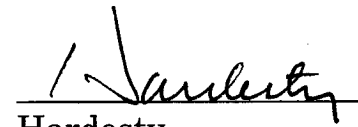
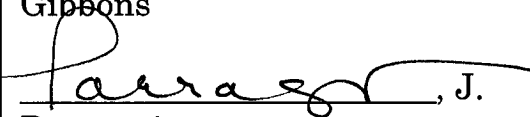
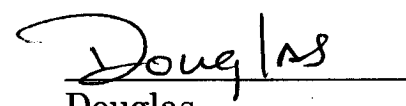
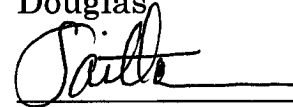
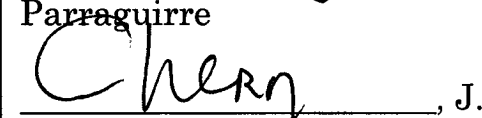
Having determined that the statute could not be enforced as constitutionally infirm, the next logical step would have been for the district court to adjudicate the scope of the alleged easement rights and, thus, whether a taking even occurred. Eschewing that procedure, the district court proceeded to encourage the parties to file a writ petition in this court concerning the constitutionality of NRS 408.497.

We decline to exercise our discretion to consider whether NRS 408.497 is constitutional. Instead, the parties should proceed to litigate whether a taking has occurred. In the event that the district court makes an adverse ruling in its final judgment, NDOT can appeal. Based on the circumstances of this case, such an appeal constitutes an adequate and speedy remedy at law precluding writ relief.³ Declining to consider the constitutional issue in the context of this writ petition also serves the interests of judicial efficiency. Since the landowners have proffered a number of reasons why the statute does not apply to them, and some of these reasons do not pertain to the statute's constitutionality, this court

³Pan v. Dist. Ct., 120 Nev. 222, 225, 88 P.3d 840, 841 (2004) (pointing out that since an interlocutory order can ultimately be challenged in an appeal from the final judgment, writ relief is generally unavailable).

may not need to reach the constitutional issue in reviewing any appeal from the final judgment.⁴ For these reasons, we

ORDER the petition DENIED.

 _____, J. Gibbons	 _____, C.J. Maupin	 _____, J. Hardesty
 _____, J. Parraguirre	 _____, J. Douglas	 _____, J. Saitta
 _____, J. Cherry		

cc: First Judicial District Court Dept. 1, District Judge
Attorney General Catherine Cortez Masto/Carson City
Law Offices of Michael G. Chapman
Carson City Clerk

⁴Brewery Arts Center v. State Bd. of Examiners, 108 Nev. 1050, 843 P.2d 369 (1992) (noting tht this court will not decide a constitutional issue unless necessary to the determination of a case).