

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTEN SILBERMAN,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, AND THE  
HONORABLE CHERYL MOSS, DISTRICT  
JUDGE, FAMILY COURT DIVISION,

Respondents,


and

JOHN SILBERMAN,  
Real Party in Interest.

No. 49554

**FILED**

MAR 07 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district order denying petitioner's motion to (1) vacate an ex parte order extending the time for service of process, (2) quash service of process, and (3) dismiss the divorce complaint.

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> A writ of mandamus will not lie to control a district court's discretionary act, unless that discretion is manifestly abused.<sup>2</sup> As the counterpart to a writ of mandamus, a writ of prohibition is available when a district court acts without or in excess of its jurisdiction.<sup>3</sup> Because

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<sup>1</sup>NRS 34.160

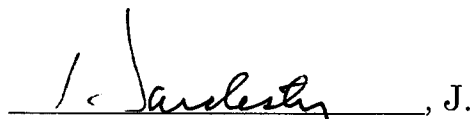
<sup>2</sup>See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

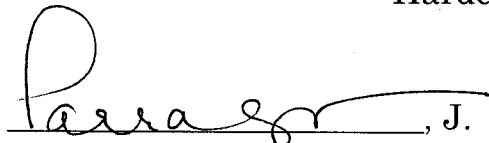
<sup>3</sup>State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320.

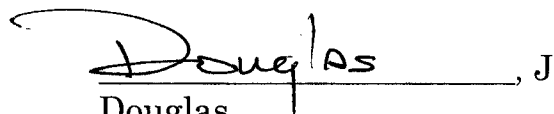
mandamus and prohibition are extraordinary remedies, whether a petition will be considered is entirely within our discretion.<sup>4</sup> Petitioner bears the burden of demonstrating that extraordinary relief is warranted.<sup>5</sup>

Having considered this writ petition and its supporting documentation, and real party in interest's answer, we are not persuaded that our extraordinary intervention is warranted. In particular, petitioner has failed to demonstrate that the district court, in exercising its discretion to extend the time for service of process, manifestly abused that discretion by granting real party in interest's request for the extension of time.<sup>6</sup> Accordingly, we

ORDER the petition DENIED.

  
Hardesty, J.

  
Parraguirre, J.

  
Douglas, J.

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<sup>4</sup>Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

<sup>5</sup>Pan v. Dist. Ct., 120 Nev. 238, 228, 88 P.3d 840, 844 (2004).

<sup>6</sup>See NRCP 4(i); NRCP 6(b); Scrimmer v. Dist. Ct., 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000) (setting forth factors that the district court may consider in determining whether a plaintiff has demonstrated good cause for failure to serve a defendant with a summons and complaint within NRCP 4(i)'s 120-day prescriptive period, and explaining that because good public policy dictates that cases be adjudicated on their merits, a balanced and multifaceted analysis is warranted when the district court is determining whether to exercise its discretion to extend the time for service under NRCP 4(i)).

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division  
Bruce I. Shapiro, Ltd.  
Chesnoff & Schonfeld  
Eighth District Court Clerk