

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRACY TAYLOR, P.E., NEVADA STATE
ENGINEER, DIVISION OF WATER
RESOURCES,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
ROBERT H. PERRY, DISTRICT JUDGE,
Respondents,

and

ROBERT KENT; MURIEL KENT; AND
I.H. KENT CO., INC.,
Real Parties in Interest.

No. 52671

FILED

DEC 03 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF PROHIBITION OR CERTIORARI

This original petition for a writ of prohibition or certiorari challenges a district court order transferring the underlying water law matter to the Third Judicial District Court in Churchill County.

A writ of prohibition is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.¹ A writ of certiorari is available to cure jurisdictional excesses, when there is no plain, speedy, and adequate legal remedy.² Writs of prohibition and certiorari are extraordinary remedies, and the decision to entertain a petition requesting

¹NRS 34.320.

²NRS 34.020(2).

these forms of relief is within this court's discretion.³ Moreover, petitioner bears the burden of demonstrating that our intervention by way of extraordinary relief is warranted,⁴ which generally includes demonstrating that no plain, speedy, and adequate legal remedy exists.⁵ This court has consistently held that an appeal is generally an adequate legal remedy precluding writ relief.⁶

Here, petitioner sought to dismiss the underlying water law action contending that the district court lacked jurisdiction under NRS 533.450 because the petition for judicial review filed by real parties in interest was untimely and was filed in the wrong county. Real parties in interest opposed the motion. Rather than dismiss the action, however, the district court transferred the matter to the district court in Churchill County. This petition followed. Because we conclude that petitioner has a plain, speedy, and adequate legal remedy available, we deny the petition.

To the extent that the district court changed the venue of the underlying proceeding, such an order is substantively appealable under NRAP 3A(b)(2).⁷ Thus, petitioner has a speedy and adequate remedy

³Dangberg Holdings v. Douglas Co., 115 Nev. 129, 978 P.2d 311 (1999); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁴Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); see NRAP 21(c) (providing that a petition for an extraordinary writ other than mandamus or prohibition generally shall be sought in the same manner as a petition for a writ of prohibition or mandamus).

⁵NRS 34.020(2); NRS 34.330.

⁶See Pan, 120 Nev. at 224, 88 P.3d at 841.


⁷See NRS 533.450(7) (noting that "[t]he practice in civil cases applies to the informal and summary character of" water law proceedings); cf. Desert Valley Water Co. v. State Engineer, 104 Nev. 718, 720, 766 P.2d

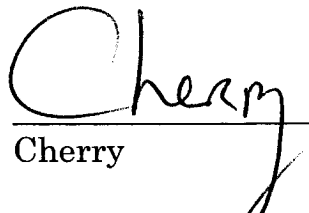
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available in the form of an appeal from that portion of the order.⁸ Moreover, to the extent that petitioner seeks to compel the district court to dismiss the underlying action, a request implicitly denied by the district court, we conclude that petitioner also has a speedy and adequate legal remedy available. Specifically, now that the action has been transferred to Churchill County, petitioner can renew its motion to dismiss based on the argument that the petition for judicial review was untimely filed.

Accordingly, because we conclude that petitioner has a speedy and adequate legal remedy available, we

ORDER the petition DENIED.⁹

_____, J.
Gibbons

_____, J.
Cherry

_____, J.
Saitta

... continued

886, 887 (1988) (interpreting NRS 533.450(7) to mean that the rules of civil procedure apply to judicial review of water law decisions).

⁸To the extent that the time for appealing from that portion of the district court's order has run, we note that writ relief is not available to correct an untimely notice of appeal. Pan, 120 Nev. at 224-25, 88 P.3d at 841.

⁹See NRAP 21(b); NRAP 21(c); Pan, 120 Nev. at 224, 88 P.3d at 841; Smith, 107 Nev. 674, 818 P.2d 849; Schumacher v. District Court, 77 Nev. 408, 365 P.2d 646 (1961).

cc: Hon. Robert H. Perry, District Judge
Attorney General Catherine Cortez Masto/Reno
Woodburn & Wedge
Washoe District Court Clerk