

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN ALLEN WEBB,
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
FAUSTO LUNA,
Real Party in Interest.

No. 57326

FILED

JUL 18 2011

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

ORDER DENYING PETITION FOR
WRIT OF PROHIBITION OR MANDAMUS

This original petition for a writ of prohibition or mandamus challenges a district court order denying a motion to dismiss.


A writ of prohibition is available when a district court acts without or in excess of its jurisdiction. State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320. A writ of mandamus may be issued “to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station.” International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); see also NRS 34.160. This court will generally decline to consider writ petitions challenging district court orders denying motions to dismiss because an appeal from the final judgment is usually an adequate and speedy legal remedy, precluding writ relief, and even when it is not, such writ petitions “rarely have merit, often disrupt district court case processing, and consume an enormous amount of this court’s resources.” International Game Tech., 124 Nev. at 197, 179 P.3d at 558-59 (internal

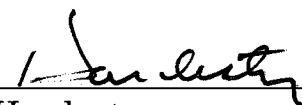
quotations omitted). In some instances, this court will consider such petitions if no factual dispute exists and the district court was obligated to dismiss the action pursuant to clear authority or if an important issue of law needs clarification. Id. at 197-98, 179 P.3d at 559. Petitioner bears the burden of demonstrating that our extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Petitioner moved to dismiss real party in interest's complaint for failure to timely serve process because real party in interest had served process by publication, and petitioner contended that real party in interest failed to diligently investigate petitioner's whereabouts before moving to serve process in that manner. In response to the motion to dismiss, real party in interest presented evidence that he had attempted to locate petitioner prior to moving for permission to serve process by publication. The authority cited by petitioner involved district court refusals to set aside default judgments, and nothing in these cases obligated the district court to dismiss this action. See Browning v. Dixon, 114 Nev. 213, 954 P.2d 741 (1998); Price v. Dunn, 106 Nev. 100, 787 P.2d 785 (1990) disagreed with on other grounds by NC-DSH, Inc. v. Garner, 125 Nev. ___, 218 P.3d 853 (2009). Because petitioner has not met his burden of showing that extraordinary relief is warranted, see Pan, 120 Nev. at 228, 88 P.3d at 844, we

ORDER the petition DENIED.


_____, C.J.
Douglas


_____, J.
Saitta


_____, J.
Hardesty

cc: Hon. Robert H. Perry, District Judge
David L. Riddle & Associates
Jorge G. Corral
Washoe District Court Clerk