

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELINDA BOOTH DOGRA; AND
JAGDISH DOGRA,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
LINDA MARIE BELL, DISTRICT
JUDGE,

Respondents,

and

JANE H. LILES, AN INDIVIDUAL,
Real Party in Interest.

No. 58804

FILED

AUG 30 2011

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

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order dismissing a party for lack of personal jurisdiction in a tort action.

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion, NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008), in cases in which “there is not a plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170. A writ of prohibition may issue to confine the district court to the proper exercise of its prescribed jurisdiction when the court has acted in excess of its jurisdiction, see NRS 34.320, in cases where “there is not a plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.330.

Petitioners assert that the district court entered an order dismissing real party in interest from the underlying district court case for lack of personal jurisdiction.¹ On May 24, 2011, petitioners moved for reconsideration of the district court order and alternatively sought NRCP 54(b) certification. This motion was opposed, and petitioners filed a reply, in which they argued that the opposition made no mention of their request for NRCP 54(b) certification. The district court order purportedly resolving this motion did not address petitioners' request for NRCP 54(b) certification.²

Under NRCP 54(b), the district court may direct entry of a final judgment as to one party "upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." A properly certified final judgment pursuant to NRCP 54(b) is appealable. See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990). Here, although petitioners' motion for reconsideration also requested NRCP 54(b) certification, the district court's order resolving petitioners' motion does not appear to have made an explicit ruling on the request for NRCP 54(b) certification. If granted, it

¹The copy of the dismissal order included in petitioners' appendix, while signed by the district court, is not file-stamped and is therefore ineffective. See Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (stating that "[t]he district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose").

²Again, the copy of this district court order included in petitioners' appendix is signed, but not file-stamped, and is therefore ineffective. See Rust, 103 Nev. at 689, 747 P.2d at 1382.

appears that NRCP 54(b) certification would permit petitioners to appeal from the challenged order. As this court has previously explained, an appeal is generally an adequate legal remedy precluding writ relief. See Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Accordingly, we conclude that our intervention by way of extraordinary relief is not warranted, see Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (explaining that whether a writ petition will be granted is solely within this court's discretion); NRAP 21(b)(1), and therefore we

ORDER the petition DENIED.³

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Raleigh & Hunt, P.C.
Barron & Pruitt, LLP
Eighth District Court Clerk

³This order is without prejudice to petitioners' right to challenge an explicit denial of its NRCP 54(b) certification request through a petition for extraordinary relief.