

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA EX REL.
ANTHONY VOGEL AND THE CLARK
COUNTY DEPUTY MARSHALS
ASSOCIATION,
Petitioners,
vs.
STEVEN D. GRIERSON; LADEANA
GAMBLE; EIGHTH JUDICIAL
DISTRICT COURT; AND LAS VEGAS
JUSTICE COURT, and CLARK
COUNTY,
Respondents.

No. 62225

FILED

MAR 21 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malan*
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of quo warranto or, in the alternative, a writ of prohibition, to determine whether employment of deputy marshals by the Eighth Judicial District Court is a violation of the constitutional doctrine of separation of powers.

Petitioners, the Clark County Deputy Marshals Association and its president, Deputy Marshal Anthony Vogel, petition this court for writs of quo warranto or prohibition. They ask this court to prevent the Eighth Judicial District Court and the Las Vegas Justice Court from controlling the deputy marshals' employment, which allegedly removes the deputy marshals from their rightful positions as executive branch officers. Petitioners contend that the courts are not authorized to employ marshals and that doing so violates the doctrine of separation of powers. In the alternative, petitioners request that this court issue a writ of prohibition preventing respondents from enforcing Eighth Judicial District Court Rule

1.53, which allegedly prevents deputy marshals from joining employment organizations. They argue that this local rule violates the First Amendment to the United States Constitution.

The writ of “[q]uo warranto generally is available to challenge an individual’s right to hold office and to oust the individual from the office if the individual’s claim to it is invalid or has been forfeited.” *Lueck v. Teuton*, 125 Nev. 674, 678, 219 P.3d 895, 898 (2009). “A writ of prohibition is available to halt proceedings occurring in excess of a court’s jurisdiction.” *Clay v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 313 P.3d 232, 234 (citing NRS 34.320). This court has full discretion whether to consider petitions for extraordinary writ relief. *Id.*

“[W]e will exercise our discretion to consider such a petition only when there is no ‘plain, speedy and adequate remedy in the ordinary course of law.’” *Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867, 869, 124 P.3d 550, 552 (2005) (quoting NRS 34.170; NRS 34.330). In the absence of urgent circumstances or necessity, declaratory judgment is a plain, speedy, and adequate remedy that generally precludes extraordinary relief. *See Falcke v. Cnty. of Douglas*, 116 Nev. 583, 586, 3 P.3d 661, 662-63 (2000).

In this case, declaratory judgment is available as a remedy for petitioners’ grievances. NRS 30.040(1) permits actions for declaratory judgment when a person’s rights are affected by statute or municipal ordinance:

Any person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a

declaration of rights, status or other legal relations thereunder.

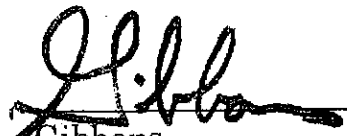
NRS 30.040(1). Petitioners here question the legality of the status of employment conferred upon them by the Eighth Judicial District Court and Clark County. *City of Sparks v. Sparks Municipal Court*, 129 Nev. ___, 302 P.3d 1118 (2013), is directly on point. In that case, the municipal court successfully sued for declaratory and injunctive relief against the municipality's attempts to control court employees. *Id.* at ___, 302 P.3d at 1123-24. Likewise, petitioners in this case could have sued to enjoin the Eighth Judicial District Court from controlling their employment duties and for a declaration that EDCR 1.53 is unconstitutional. We consider the availability of such declaratory relief to preclude the extraordinary relief requested by petitioners.

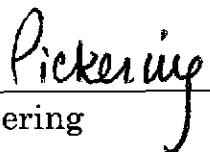
This case is distinguishable from *State ex rel. Harvey v. Second Judicial District Court*, 117 Nev. 754, 759-60, 32 P.3d 1263, 1267 (2001), because there the contested employment position was a public office and, thus, the petitioner was entitled to bring an action under NRS 35.050. "A public office is distinguishable from other forms of employment in that its holder has by the sovereign been invested with some portion of the sovereign functions of government." *Eads v. City of Boulder City*, 94 Nev. 735, 737, 587 P.2d 39, 41 (1978) (quoting *State ex rel. Mathews v. Murray*, 70 Nev. 116, 120-21, 258 P.2d 982, 984 (1953)). A mere employee, in contrast, is characterized by possessing duties not precisely defined by statute, a lack of tenure, no power to hire or fire, and subordination to superiors. *Mullen v. Clark Cnty.*, 89 Nev. 308, 311, 511 P.2d 1036, 1038 (1973). We find that the petitioners here are more like employees than public officers because each "deputy marshal serves at the pleasure of the judge he or she serves." NRS 3.310(1); *see also* NRS

4.353(1). Moreover, the deputy marshals must "[p]erform such other duties as may be required of him or her by the judge of the court." NRS 3.310(3)(d); *see also* NRS 4.353(3)(c). The fact that statute creates the position of deputy marshal and broadly prescribes some duties does not mean that deputy marshals are public officers. *See Mullen*, 89 Nev. at 311, 511 P.2d at 1038 (stating that statutory creation of position of Director of Juvenile Services was "insignificant since the responsibility . . . truly rests in the judges of the court").

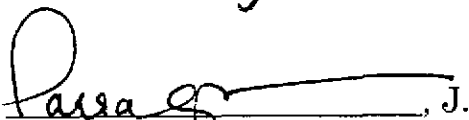
Because petitioners have an adequate remedy in the ordinary course of law, we decline to grant writ relief. Accordingly, we

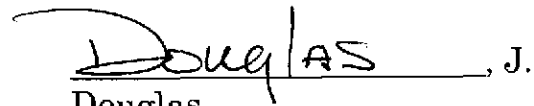
ORDER the petition DENIED.

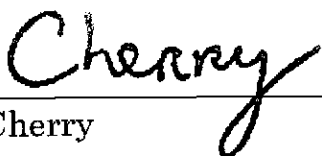

Gibbons, C.J.



Pickering, J.


Hardesty, J.


Parraguirre, J.


Douglas, J.


Cherry, J.


Saitta, J.

cc: Law Office of Daniel Marks
Clark County District Attorney
Clark County District Attorney/Civil Division
Olson, Cannon, Gormley, Angulo & Stoberski
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