

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES ROGERS, JR.,
Petitioner,
vs.
THE HONORABLE GAYLE NATHAN,
DISTRICT JUDGE,
Respondent.

No. 66464

FILED

MAR 03 2015

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original pro se petition for a writ of mandamus seeks an order directing the district court to issue a final decree of divorce.

In the underlying proceeding, the district court entered a divorce decree granting petitioner, an inmate, an interest in his ex-wife's pension. When petitioner attempted to obtain his interest in the pension, however, he was informed that the divorce decree lacked certain information necessary to enforce the decree's ruling as to the pension. Thereafter, petitioner moved the district court to modify the divorce decree to include the necessary information so that he could obtain his portion of the pension. The motion was scheduled for a hearing, but the hearing was taken off the calendar when neither petitioner nor his wife appeared.

Petitioner now seeks a writ of mandamus directing the district court to enter a final divorce decree that will permit him to enforce his interest in his ex-wife's pension. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (explaining that 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 or to control an arbitrary or capricious exercise of

discretion). In his petition, however, petitioner has not identified any efforts that he has taken following the removal of the hearing on his motion from the calendar to have that motion recalendared and heard by the district court. Thus, while it appears that this motion has lingered on the district court's docket for some time, we are confident that, once petitioner has taken further steps in the district court to have the matter addressed, that court will resolve the motion as promptly as its calendar permits.


Finally, to the extent that petitioner seems to suggest that our intervention is warranted because he cannot pay certain district court filing fees, the district court granted petitioner leave to file this writ petition in forma pauperis, and he has not explained why he may not also be granted such status in the district court proceeding. See NRS 12.015 (providing procedures by which an indigent party may obtain leave to proceed in civil cases without the payment of costs). Under these circumstances, we conclude that our intervention by way of extraordinary writ relief is not warranted at this time, and we therefore deny the petition.¹ NRAP 21(b)(1); *Smith v. Eighth Judicial Dist. Court*, 107 Nev.

¹To the extent that the district court fails to act on petitioner's motion once he takes the appropriate steps to have the matter placed back on the court's calendar, our denial of this petition is without prejudice to petitioner's right to file a new writ petition seeking appellate court intervention to compel the district court to resolve that motion. Moreover, if petitioner is ultimately aggrieved by any district court order resolving his motion, it appears that such an order would be a special order entered after final judgment, from which petitioner would have the right to appeal. See NRAP 3A(b)(8); *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (explaining that a special order entered after final judgment is "an order affecting the rights of some party to the action, growing out of the judgment previously entered").

674, 677, 818 P.2d 849, 851 (1991) (explaining that whether to consider a petition for a writ of mandamus is discretionary).

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David Barker, Chief Judge
Hon. Charles J. Hoskin, Presiding Family Court Judge
Eighth Judicial District Court, Department T
James Rogers, Jr.
Attorney General/Carson City
Eighth District Court Clerk