

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANNA GRESL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JENNIFER ELLIOTT, DISTRICT
JUDGE,
Respondents,
and
RICHARD JAMES LONDON,
Real Party in Interest.

No. 76467-COA

FILED

FEB 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS*

This is an original petition for mandamus relief arising from a child support dispute in which petitioner Anna Gresl asserts that a motion to modify child support filed by real party in interest Richard James London has been pending for more than two years.

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. *See* NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court has discretion as to whether to entertain a petition for extraordinary relief and will not do so when the petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden of demonstrating that

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extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).


This petition was transferred to this court in August 2018, and the district court later filed two status reports, at this court's direction, regarding the status of the remaining child support issues. When the district court's final status report, in conjunction with a review of the district court's online docket, indicated that the parties continued to extend the litigation of the underlying support issues and had stipulated to continue the briefing of these matters, this court directed Gresl to show cause why this court's extraordinary intervention was warranted under these circumstances, given that the petition largely focuses on the district court's delay in resolving the pending support issues.

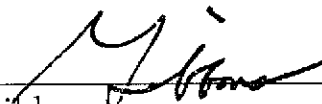
Having reviewed Gresl's response to this show cause order, we conclude that the petition should be denied. A review of the response, in conjunction with the prior status reports, demonstrates that both parties bear responsibility for the continued delay in moving the underlying issues towards a final resolution since this court directed its first status report from the district court. Under these circumstances, and having considered the petition and the limited record provided in this matter, we conclude Gresl has not demonstrated that our extraordinary intervention in the underlying case is warranted.¹ *See Pan*, 120 Nev. at 228, 88 P.3d at 844.

¹We decline Gresl's request that we offer a jurisdictional assessment as to whether any final, appealable order had been previously entered in the underlying case. While our August 31, 2018, status report order noted that it "does not appear" that the challenged order resolved all of the support issues raised in the motion to modify child support, an accurate assessment as to what issues remain pending below cannot be made given the limited record submitted with this petition. Moreover, to the extent a

Accordingly, we deny the petition. See NRAP 21(b)(1); *D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737.

It is so ORDERED.²


_____, A.C.J.
Douglas


_____, J.
Gibbons

cc: Department L, Eighth Judicial District Court, Family Court Division
Hon. Linda Marie Bell, Chief Judge Eighth Judicial District Court
Hon. Bryce Duckworth, Presiding Judge, Eighth Judicial District
Court, Family Court Division
The Jimmerson Law Firm, P.C
Radford J. Smith, Chartered
Eighth District Court Clerk

final order may have been entered with Gresl failing to appeal from that determination, it is well established that writ relief will not lie to cure a failure to timely appeal. *Pan*, 120 Nev. at 224–25, 88 P.3d at 841.

²The Honorable Jerome T. Tao did not participate in the decision in this matter.