

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE MANRIQUEZ,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE ERIC
JOHNSON, DISTRICT JUDGE,

Respondents,

and

OMID SHAMIM,
Real Party in Interest.

No. 78555-COA

FILED

JUN 24 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging district court orders granting an ex parte motion to enlarge the time for service and denying a motion to dismiss.

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). A writ of mandamus will not issue, however, if the petitioner has a plain, speedy, and adequate remedy at law. *See* NRS 34.170; *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *See* *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Petitioner bears the burden of demonstrating that

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

Having considered the documents before us, we conclude that petitioner has failed to demonstrate that extraordinary writ relief is warranted. *See id.* Accordingly, we deny the petition.¹ *See* NRAP 21(b)(1); *Smith*, 107 Nev. at 677, 818 P.2d at 851.²

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹We note that real party in interest Omid Shamim's attempted substituted service on the DMV was not properly effectuated because he failed to demonstrate due diligence in attempting to locate petitioner Jose Manriquez in the state and he failed to send notice of service and a copy of the process to Manriquez by registered or certified mail at the best address available to him. *See* NRS 14.070; *Browning v. Dixon*, 114 Nev. 213, 954 P.2d 741 (1998). However, that fact does not change the disposition of the instant petition because, at the time the district court erroneously ruled that service on the DMV was properly effectuated, the plaintiff still had time to effectuate service due to the enlargement of time granted by the district court. Thus, even if the district court had properly determined that service was ineffective, dismissal was not required at that time.

²In light of this order, we deny as moot petitioner's motion for a stay of the district court proceedings.

cc: Hon. Eric Johnson, District Judge
Resnick & Louis, P.C.
Bernstein & Poisson
Eighth District Court Clerk