

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JENNIFER S. ANDERSON, ESQ.,  
Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CARSON CITY; AND THE  
HONORABLE JAMES E. WILSON,  
DISTRICT JUDGE,

Respondents,

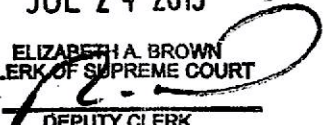
and

WALTER T. RADABAUGH,  
INDIVIDUALLY; DEBORAH BOWERS,  
AS GUARDIAN FOR THE ESTATE OF  
WALTER T. RADABAUGH; KELLY  
LUND, TRUSTEE FOR THE  
RADABAUGH 1979 TRUST AND THE  
WALTER THOMAS RADABAUGH  
IRREVOCABLE TRUST; AMY  
RADABAUGH, INDIVIDUALLY; AND  
JULIE PAUL, INDIVIDUALLY,  
Real Parties in Interest.

No. 77902-COA

**FILED**

JUL 24 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER GRANTING PETITION*

Jennifer S. Anderson, Esq., filed an original petition for a writ of mandamus or prohibition challenging district court orders sanctioning her and awarding attorney fees and costs.<sup>1</sup>

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<sup>1</sup>We grant the March 13, 2019, motion to substitute parties. The clerk of the court shall therefore revise the caption for this matter to conform to the caption on this order.

19-31294

This writ petition arises out of Anderson's representation of Walter T. Radabaugh in guardianship proceedings.<sup>2</sup> Radabaugh is an elderly man for whom the district court appointed a permanent guardian over his estate after Amy Radabaugh and Julie Paul (Radabaugh's daughters) petitioned the district court to appoint one. After the guardian was appointed, Radabaugh sought legal representation from Anderson, who agreed to represent him pro bono. Subsequently, Anderson argued that the district court lacked subject-matter jurisdiction over the trusts of which Radabaugh was a beneficiary and moved for the district court to vacate prior orders affecting the trusts. The district court denied the motion and concluded for policy reasons that it would not vacate its prior orders related to the trust and it had jurisdiction over the trusts. Nonetheless, it stated that two actions should have been filed and ordered the court clerk to open a separate case for issues relating to the trusts.

Arguing that Anderson's motion was frivolous, Radabaugh's daughters moved for NRCP 11 sanctions against her in the guardianship case. The district court denied the motion and concluded that such a motion should have been filed in the trust case and that only the trustee would have standing to file it. Later, in the trust case, the trustee filed a motion requesting NRCP 11 sanctions against Anderson, which she opposed. In the end, the district court granted the trustee's motion, and the trustee filed the notice of entry of that order on May 14, 2018. In its order, the district court concluded that Radabaugh did not have the capacity to retain counsel and that Anderson failed to seek guardian approval or court appointment prior to representing Radabaugh. Also, the district court concluded that

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<sup>2</sup>We do not recount the facts except as necessary to our disposition.



Anderson frivolously argued that the district court lacked subject-matter jurisdiction over the trusts and that she made factual allegations lacking evidentiary support. As a sanction, the district court awarded the trustee attorney fees and costs associated with having to respond to Anderson's motion and bring the motion for sanctions. But it was not until seven months later, on December 14, 2018, that the district court entered its order awarding the trustee \$2,855 in attorney fees and \$336.31 in costs. Anderson filed her writ petition on January 16, 2019.

Anderson raises three arguments for vacating the district court's orders: (1) the district court creating a separate trust case demonstrates that her motion was not frivolous; (2) the district court erred as a matter of law when it concluded that she needed guardian approval or court appointment to represent Radabaugh; and (3) the district court was required to hold a hearing prior to sanctioning her, but did not.

As an initial matter, we must address whether Anderson is entitled to seek writ relief. The power to issue writs of mandamus and prohibition is within this court's original jurisdiction and discretion. *Mountain View Hospital v. Eighth Judicial Dist. Court*, 128 Nev. 180, 184, 273 P.3d 861, 864 (2012). Generally, this court only issues extraordinary writs in cases "where there is not a plain, speedy and adequate remedy" at law. NRS 34.170; NRS 34.330. And, importantly for this case, "[s]anctioned attorneys do not have standing to appeal because they are not parties in the underlying action; therefore, extraordinary writs are a proper avenue for attorneys to seek review of sanctions." *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 131 Nev. 783, 786-87, 358 P.3d 228, 231 (2015). Here, as Radabaugh's attorney, Anderson was not a party to the trust case and therefore could not appeal from the district court's orders in that case.

Because Anderson lacks a plain, speedy, and adequate legal remedy, she is entitled to seek extraordinary writ relief.<sup>3</sup> We now turn to the issues raised in Anderson's writ petition.

"This court reviews a district court's award of attorney fees and costs, as a sanction, for an abuse of discretion." *Berkson v. LePome*, 126 Nev. 492, 504, 245 P.3d 560, 568 (2010). And a district court abuses its discretion when it relies on a misinterpretation of the law. *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011). We review conclusions based on a district court's interpretation of a statute de novo. *Day v. Washoe Cty. Sch. Dist.*, 121 Nev. 387, 388, 116 P.3d 68, 69 (2005).

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<sup>3</sup>We also reject real parties in interest's arguments that laches and unclean hands bar Anderson from bringing this petition and that she had a statutory right to appeal from the district court's orders. While the notice of entry of the order granting the motion for NRCP 11 sanctions was filed on May 14, 2018, the order actually awarding attorney fees and costs was not filed until December 14, 2018. Because Anderson filed her writ petition just over a month after the district court awarded attorney fees and costs, there was no inexcusable delay sufficient to trigger the doctrine of laches. See *State v. Eighth Judicial Dist. Court (Anzalone)*, 118 Nev. 140, 147-48, 42 P.3d 233, 238 (2002) (providing the three-part test for laches and concluding that laches did not bar a writ petition filed less than four months after the district court entered its order). Moreover, because we conclude that the district court erred below, unclean hands does not apply to bar Anderson's petition. Additionally, Anderson could not have appealed through NRS 159.375(5) as the interested parties argue. That section, which appears in NRS Chapter 159 titled "Guardianship of Adults," only provides the right to appeal certain orders pertaining to guardianship cases. Here, Anderson was sanctioned in the trust case, so that provision is inapplicable. Furthermore, even if it were applicable, as mentioned above, Anderson was not a party to the underlying case and therefore could not have directly appealed anyway.



We first consider whether the fact that the district court ordered the court clerk to open a separate trust case indicates that Anderson's argument was not frivolous. The district courts have original subject matter jurisdiction over all cases except those in which the justice courts have original jurisdiction. See Nev. Const. art. 6, § 6; *Morrison v. Beach City LLC*, 116 Nev. 34, 37, 991 P.2d 982, 983 (2000). And NRS 4.370 lists the cases that the justice courts have jurisdiction over with no mention of cases relating to trusts. Therefore, the district court had subject-matter jurisdiction over Radabaugh's trusts. Moreover, a district court generally must assume jurisdiction over trusts whenever a beneficiary petitions it to do so. NRS 164.010(1). Here, Radabaugh had previously petitioned the court to remove a trustee, and therefore, the district court was required to assume jurisdiction over the trusts. Accordingly, Anderson's argument before the district court that it lacked subject-matter jurisdiction over the trusts was unpersuasive even though she was successful in having the trust action separated from the guardianship action.

Next, we consider whether the district court erred as a matter of law when it concluded that Anderson needed guardian approval or court appointment before she could represent Radabaugh. Guardian approval is not a precondition for an attorney to represent an individual in guardianship proceedings. See NRS 159.0485. NRS 159.0485 gives the court the power to appoint an attorney upon the filing of a petition seeking one, but nothing in the guardianship statutes requires that either the court or a guardian pre-approve a protected person's attorney. Quite to the contrary, the statute allows the court to appoint one unless the protected person has already "retained an attorney of his or her own choice" in which case the protected person's choice of attorney must be honored. NRS

159.0485(1). Moreover, NRS 159.328(1)(a) broadly provides that a protected person has the right to “[h]ave an attorney at any time during a guardianship to ask the court for relief.” There is no requirement that when a protected person chooses to hire his or her own attorney, the attorney must then seek permission from the court or a guardian before agreeing to the representation. Therefore, the district court erred when it concluded that guardian approval or court appointment were the only mechanisms by which Anderson could represent Radabaugh.<sup>4</sup>

The district court imposed sanctions based partly upon this erroneous legal analysis, but also partly upon a separate finding that

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<sup>4</sup>We also note that the district court erred when it concluded that Radabaugh did not have the capacity to contract. If a protected person enters into a contract, that contract simply becomes voidable by the guardian. See NRS 159.097. However, a voidable contract is not automatically void; rather, it simply provides some party with the power to void it. See Restatement (Second) of Contracts § 7 (1981) (“A voidable contract is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance.”). Therefore, Radabaugh’s guardianship did not render him incapable of entering into a contract; it merely required that his guardian have the power to void a contract should he enter into one. However, though we need not decide this issue, we note that a guardian’s power to void contracts might not extend to attorney-client relationships. See Nina A. Kohn & Catheryn Koss, *Lawyers for Legal Ghosts: The Legality and Ethics of Representing Persons Subject to Guardianship*, 91 Wash. L. Rev. 581, 597 (2016) (“Even if contract law or agency law were inconsistent with persons subject to guardianship engaging attorneys to represent them, such persons would still have a constitutional right to representation in certain situations.”); see also NRS 159.328(1)(a) (stating that a protected person has the right to “[h]ave an attorney at any time during a guardianship to ask the court for relief”).




Anderson made factual assertions that lacked evidentiary support. We have no way of discerning from the record whether the district court would still have imposed sanctions based solely upon Anderson's unsupported factual assertions after the erroneous legal analysis is removed from the equation. Therefore, we must vacate the district court's orders.<sup>5</sup>

Based on the foregoing, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its orders sanctioning Anderson and awarding attorney fees and costs.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. James E. Wilson, District Judge  
Handelin Law Ltd.  
Bittner Legal LLC  
Washoe Legal Services  
Carson City Clerk

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<sup>5</sup>In light of our disposition, we need not address whether the district court erred in not holding a hearing prior to sanctioning Anderson. Moreover, based on our disposition, we deny the interested parties request for fees and costs under NRAP 38.