

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACK MICHAEL GERNERT,
Petitioner,

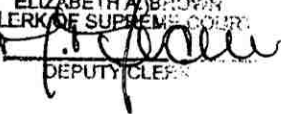
vs.

THE ELEVENTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
MINERAL,
Respondent.

No. 86203-COA

FILED

JUN 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DISMISSING PETITION

In this original petition for a writ of mandamus, Jack Michael Gernert seeks an order directing the Clerk of the Court to file Gernert's motion for judicial action, which was dated December 20, 2022, and "to file all incoming correspondence and pleadings provided by the petitioner."

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, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *See Poulos v. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); *see also State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339

(1983). “Petitioner[] carr[ies] the burden of demonstrating that extraordinary relief is warranted.” *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

On May 2, 2023, we ordered the State, on behalf of respondent, to file an answer to Gernert’s petition. The State filed an answer and appendix demonstrating that the district court had filed Gernert’s motion for judicial action on December 27, 2022. Accordingly, we agree with the State that Gernert’s claim with respect to the filing of his motion is moot. *See Nat’l Collegiate Athletic Ass’n v. Univ. of Nev., Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981).

Gernert also appears to seek an order directing the Clerk of the Court to file all future correspondence and pleadings that Gernert submits. “However, a writ of mandamus will not be granted in anticipation of a supposed omission of duty, however strong the presumption may be that the persons whom it is sought to coerce by the writ will refuse to perform their duty when the proper time arrives.” *Brewery Arts Ctr. v. State Bd. of Examiners*, 108 Nev. 1050, 1053-54, 843 P.2d 369, 372 (1992) (internal quotation marks omitted). Rather, the duty owed must be “actually due . . . at the time of the application” for the writ. *Id.* at 1054, 843 P.2d at 372. As Gernert has not specified any other pleading that the Clerk of the Court had a duty to file but failed to file, we conclude Gernert is not entitled to relief based on this claim.

For the foregoing reasons, we conclude Gernert has not met his burden of demonstrating that extraordinary relief is warranted, and we ORDER the petition DISMISSED.¹


_____, C.J.
Gibbons


_____, J.
Westbrook


_____, Sr.J.
Silver

cc: Jack Michael Gernert
Attorney General/Carson City
Clerk of the Court/Court Administrator

¹The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.