IN THE SUPREME COURT OF THE STATE OF NEVADA

INTELLECTUAL PROPERTIES HOLDING, LLC, A NEVADA LIMITED LIABILITY COMPANY; FULL COLOR GAMES, LLC, A NEVADA LIMITED LIABILITY COMPANY; FULL COLOR GAMES, INC., N.A., A NEVADA CORPORATION; JACKPOT PRODUCTIONS, LLC, A NEVADA LIMITED LIABILITY COMPANY; FULL COLOR GAMES, INC., A NEVADA CORPORATION; AND DAVID MAHON, AN INDIVIDUAL,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
SPIN GAMES, LLC, A LIMITED LIABILITY COMPANY; KENT YOUNG, AN INDIVIDUAL; MISHRA KUNAL, AN INDIVIDUAL; BRAGG GAMING GROUP, INC., A CANADIAN CORPORATION; AND ORYX INTERNATIONAL GAMING, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
Real Parties in Interest.

No. 87741

FILED

APR 19 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR A WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order granting a motion to bifurcate claims and set a preferential trial date, and the district court's refusal to swear in a witness

24-13830

to commence trial several months before the scheduled trial date. Having considered the petition, answer, and reply, we conclude that our extraordinary intervention is not warranted.

"A writ of mandamus is available to compel the performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also* NRS 34.160. Traditional mandamus relief is warranted when (1) the petitioner demonstrates a legal right to the act that the petition seeks to have done, (2) the respondent has a plain legal duty to perform that act, "without discretion on his part either to do or refuse," and (3) "the petitioner has no other plain, speedy, and adequate remedy." *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680, 476 P.3d 1194, 1196 (2020) (internal quotation marks omitted). Applying these requirements, we are not convinced that mandamus relief is warranted.

First, petitioners have not demonstrated that the district court was obligated under clear authority to set a trial date before November 27, 2023, and to swear in petitioners' first witness five months before the scheduled trial date. In evaluating a request for a preferential trial date to avoid the expiration of the five-year period in NRCP 41(e)(2)(B), "the district court must consider: (1) the time remaining in the five-year period when the motion is filed, and (2) the diligence of the moving party and his or her counsel in prosecuting the case." *Carstarphen v. Milsner*, 128 Nev. 55, 60, 270 P.3d 1251, 1254 (2012). In addition to not seeking a preferential trial setting until three months before the five-year period arguably expired on

November 27, 2023,[1] petitioners lacked diligence in prosecuting their case as evidenced by the district court sanctioning petitioners for failing to produce documents during discovery.[2] Given these circumstances, petitioners have failed to demonstrate they have a clear legal right to a preferential trial setting.

Second, the setting of preferential trial dates is left to the district court's discretion. *Monroe, Ltd. v. Cent. Tel. Co., S. Nevada Div.*, 91 Nev. 450, 456, 538 P.2d 152, 156 (1975) ("Setting trial dates and other matters done in the arrangement of a trial court's calendar is within the discretion of that court, and in the absence of arbitrary conduct will not be interfered with by this court."). We conclude that the district court did not manifestly abuse its discretion by setting an April 2024 trial date after it considered the parties' outstanding discovery obligations. Nor have petitioners demonstrated that the district court had a plain legal duty to grant a preferential trial setting or to allow a witness to be sworn in months before trial under these facts. Indeed, although "an action *may be* 'brought to trial' . . . by calling one witness who testifies," for purposes of complying with the 5-year rule, *Ad-Art, Inc. v. Denison*, 94 Nev. 73, 74, 574 P.2d 1016,

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[1]The parties disagree as to when the five-year period expires and the district court has not yet ruled on the issue. Nothing in this order precludes petitioners from arguing that the period expires on another, later date.

[2]Petitioners failed to include within their appendix the pre-trial discovery sanctions order, an order necessary for the court's determination of the issues raised. NRAP 30(b)(2)-(3); *cf. Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision.").

1017 (1978) (emphasis added), the district court is not required to swear in a witness while discovery is ongoing.

Finally, petitioners have an adequate, sufficiently speedy remedy available at law. That is, petitioners may appeal once the district court enters a final judgment, if they are aggrieved by that final judgment. NRAP 3A(b)(1) (providing that a final judgment in a civil action is appealable); *see Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (noting that "[t]his court has previously pointed out, on several occasions, that the right to appeal is generally an adequate legal remedy that precludes writ relief"). For these reasons, we

ORDER the petition DENIED.[3]

_____, C.J.
Cadish

_____, J.
Herndon

_____, J.
Bell

[3]In light of this disposition, we vacate our February 23, 2024, stay order. Real parties in interest's motion to file volume 6 of their appendix under seal is denied. The clerk of this court shall return the appendix provisionally received in this court on January 19, 2024, unfiled.

cc: Hon. Mark R. Denton, District Judge
Hutchison & Steffen, LLC/Las Vegas
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Hutchison & Steffen, LLC/Reno
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Eighth District Court Clerk