

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH EINIGER,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK
AND THE HONORABLE BILL
HENDERSON,

Respondents,

and

KIMBERLY EINIGER N/K/A


KIMBERLY MESSING,

Real Parties in Interest.

No. 90055-COA

FILED

MAY 22 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER GRANTING PETITION
FOR WRIT OF MANDAMUS*

This original petition for a writ of mandamus challenges a district court order denying a motion to expunge a lis pendens filed in a post-judgment action arising from a stipulated divorce decree.

In October 2014, the district court entered a stipulated divorce decree, terminating the marriage between petitioner Kenneth Einiger and real party in interest Kimberly Einiger. The decree assigned financial obligations to Kenneth, including alimony payments to Kimberly of \$5,000 per month for life, with a 2.5 percent annual increase. It also required Kenneth to pay Kimberly's housing costs, various health-related expenses, a monthly credit card allowance, and to continue payments on a two-million-dollar life insurance policy naming Kimberly as the sole beneficiary. Kenneth failed to fully comply with his obligations, including those related to alimony. As a result, Kimberly filed a motion pursuant to NRS 125.180 to reduce the unpaid alimony and other arrearages to judgment. Kenneth opposed the motion, and the matter was scheduled for an evidentiary hearing.

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Before the district court resolved her motion, Kimberly discovered Kenneth had listed a condominium unit for sale, which he had purchased after the divorce, and that a sale of the property was pending at the time. Kimberly recorded a notice of lis pendens against Kenneth's condominium unit. Because the lis pendens clouded the title to Kenneth's property, the pending sale fell through. Kenneth immediately filed an emergency motion to expunge the lis pendens, which Kimberly opposed. Following a hearing, the district court entered a written order denying Kenneth's motion, but explained that, if Kenneth could demonstrate a viable pending sale, the court would consider lifting the lis pendens. Subsequently, Kenneth petitioned for a writ of mandamus from this court, challenging the district court's order and seeking to compel the district court to expunge the lis pendens against his separate property which was not the subject of any legal dispute between himself and Kimberly.

Writ relief is appropriate

A writ of mandamus is available to compel the performance of an act that the law requires or to control manifest abuse or an arbitrary or capricious exercise of discretion. NRS 34.160; *Price v. Second Jud. Dist. Ct.*, 141 Nev., Adv. Op. 17, 567 P.3d 319, 321 (2025). This extraordinary relief is appropriate when the petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). “[T]he issuance of a writ of mandamus . . . is purely discretionary with this court.” *Smith*, 107 Nev. at 677, 818 P.2d at 851.

Here, Kenneth lacks a speedy and adequate legal remedy. An order denying a motion to expunge a lis pendens is not substantively appealable. See NRAP 3A(b) (listing appealable orders). Likewise, a future appeal from a final judgment in the underlying case is not an adequate remedy given that a lis pendens impedes the property's marketability and,

thus, “may cause substantial hardship to the property owner.” *Levinson v. Eighth Jud. Dist. Ct.*, 109 Nev. 747, 751, 857 P.2d 18, 21 (1993) (internal quotation marks and citation omitted), *abrogated on other grounds by Tahican v. Eighth Jud. Dist. Ct.*, 139 Nev. 11, 15, 523 P.3d 550, 554 (2023). Moreover, although the district court indicated that it would consider lifting the lis pendens if Kenneth could demonstrate a viable pending sale, the prospect of such relief becoming available does not cure the immediate adverse impact of the lis pendens on the property’s title and marketability. *See id.* We, therefore, elect to entertain this writ petition. *See Smith*, 107 Nev. at 677, 818 P.2d at 851.

The district court manifestly abused its discretion by refusing to expunge the lis pendens

In his petition, Kenneth argues that Kimberly has not asserted any claim affecting ownership or possession of the property that would justify recording a notice of lis pendens against the property under NRS 14.010. He contends that Kimberly’s claim is for outstanding alimony or a monetary judgment related to various financial obligations under the divorce decree and that she is improperly using a lis pendens as a substitute for a prejudgment writ of attachment. In response, Kimberly argues that a lis pendens may be used when there is a claim for outstanding alimony payments or when someone attempts to fraudulently transfer property while neglecting a duty to pay alimony.

A lis pendens is constructive notice to potential purchasers or lenders that the real property described in the lis pendens is the subject of a pending lawsuit. NRS 14.010(3). This court reviews the district court’s determination of whether to expunge a lis pendens for a manifest abuse of discretion. *Zhang v. Eighth Jud. Dist. Ct.*, 120 Nev. 1037, 1043, 103 P.3d 20, 24 (2004).

As acknowledged by the parties, lis pendens may be recorded upon the filing of a complaint that “affect[s] the title or possession of real

property.” NRS 14.010(1). “As a general proposition, lis pendens are not appropriate instruments for use in promoting recoveries in actions for personal or money judgments; rather their office is to prevent the transfer or loss of real property which is the subject of dispute in the action that provides the basis for the lis pendens.” *Levinson*, 109 Nev. at 750, 857 P.2d at 20; *see also Tahican*, 139 Nev. at 16, 523 P.3d at 554 (“[A] lis pendens may not be used in place of a writ of attachment to secure the ultimate collection of an anticipated money judgment.”). Even if the action is related to the specific property, a lis pendens is not an appropriate instrument for recovery in a case involving only monetary claims. *Weddell v. H2O, Inc.*, 128 Nev. 94, 106, 271 P.3d 743, 751 (2012), *abrogated on other grounds by Tahican*, 139 Nev. at 15, 523 P.3d at 554. If, after a hearing, the party who records the notice is unable to demonstrate that the action affects title or possession to real property, among other things, then the district court must order the lis pendens expunged. NRS 14.015(5).

In her initial post-decree motion to reduce the sums due under the divorce decree to judgment, Kimberly never sought to claim an interest affecting real property. Kimberly argued that Kenneth violated the divorce decree by failing to pay alimony arrears and refusing to meet his other financial obligations to her. *See* NRS 125.180 (“When either party to an action for divorce, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the district court may make an order directing entry of judgment for the amount of such arrears.”). Kimberly’s claim for a money judgment based on Kenneth’s failure to comply with the stipulated divorce decree does not warrant a lis pendens on Kenneth’s separate property because her claims are purely monetary. *See Weddell*, 128 Nev. at 106, 271 P.3d at 751.

In her answer to the writ petition, Kimberly also argues that Kenneth’s refusal to pay ordered support and his attempts to transfer assets

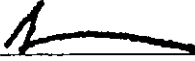
constitute fraudulent behavior to evade enforcement of the divorce decree under Nevada's Uniform Fraudulent Transfer Act (UFTA).¹ While a fraudulent transfer constitutes an action "affecting the title or possession of real property" under NRS 14.010(1), *see Tahican*, 139 Nev. at 16-17, 523 P.3d at 554, Kimberly did not bring such a claim in her initial post-decree motion. Instead, she sought only to reduce the sums due under the divorce decree to judgment pursuant to NRS 125.180. We recognize this motion may have been filed before Kimberly discovered that Kenneth had listed the property for sale. However, while Kimberly eventually raised the issue of fraud in her opposition to the motion to expunge the lis pendens, her vague allegations that Kenneth committed fraud in connection with the property were insufficient to support her argument that the lis pendens was valid to prevent a fraudulent transfer. Indeed, Kimberly failed to properly allege actionable fraud, as she did not make specific allegations as required by NRCP 9(b) (requiring fraud claims to "state with particularity the circumstances constituting fraud"). She also failed to identify a specific category of fraud, such as actual or constructive fraud, to show that Kenneth's attempt to sell the property constituted a fraudulent transfer. *See* NRS 112.180(1)(a)-(b).


Thus, the district court manifestly abused its discretion by denying the motion to expunge the lis pendens because Kimberly's claims were limited to monetary obligations under the divorce decree, lacked

¹A fraudulent transfer claim under UFTA is a claim by a creditor that a debtor transferred property with the intent to defraud the creditor by placing the property out of the creditor's reach. NRS 112.180(1)(a); *see also Herup v. First Bos. Fin., LLC*, 123 Nev. 228, 232, 162 P.3d 870, 872 (2007).

sufficient fraud allegations at this time, and did not involve any claim that would affect title to or possession of the property.² Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to comply with NRS 14.015(5) by ordering the expungement of the notice of lis pendens in this case.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Bill Henderson, District Judge, Family Division
Rosenblum Allen Law Firm
Willick Law Group
Eighth District Court Clerk

²Kimberly further argues that NRS 125.220 authorizes the recording of a lis pendens in post-divorce proceedings, but that statute falls within the separate maintenance provisions of NRS 125.190-.280 and does not apply to these proceedings. *See, e.g., Davidson v. Davidson*, 132 Nev. 709, 713, 382 P.3d 880, 883 (2016) (holding that NRS 125.240, which applies to actions for separate maintenance, does not apply to divorce proceedings).

³Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief or need not be reached given our disposition of this writ petition.