

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
CHERYL B. MOSS, DISTRICT JUDGE,
Respondents,
and
CISILIE A. PORSBOLL,
Real Party in Interest.

No. 60502

FILED

APR 06 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

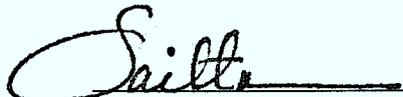
This original petition for a writ of mandamus or prohibition challenges a district court order directing petitioner to appear for a show cause hearing regarding whether he should be held in contempt.

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; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; Smith v. District Court, 107 Nev. 674, 677 818 P.2d 849, 851 (1991). It is within this court's discretion to determine if a writ petition will be considered. Smith, 107 Nev. at 677, 818 P.2d at 851. Petitioner bears the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Here, petitioner challenges a district court order directing him to appear, on April 9, 2012, to show cause why he should not be held in

contempt for his alleged refusal to comply with various court orders. While this court has held that a petition for extraordinary writ relief is the appropriate vehicle for challenging a district court contempt order, Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000), the instant petition for a writ of mandamus or prohibition appears premature, as no order actually holding petitioner in contempt has been entered by the district court. Instead, the district court has directed petitioner to appear and show cause why he should not be held in contempt. As a result, until an actual contempt order is entered by the district court, we conclude that our intervention by way of extraordinary relief is not warranted at this time, and we therefore deny the petition.¹ Smith, 107 Nev. at 677, 818 P.2d at 851; NRAP 21(b)(1).

It is so ORDERED.²

 _____, C.J.
Saitta

 _____, J.
Hardesty

 _____, J.
Parraguirre

¹While it appears that the district court has not yet entered an order determining petitioner's child support payments in accordance with this court's recent opinion in Vaile v. Porsboll, 128 Nev. ___, 268 P.3d 1272 (2012), we are confident that the district court will fully comply with the directives set forth in that opinion in assessing petitioner's child support obligation.

²We further deny all other relief requested in the petition and, in light of this order, we deny as moot petitioner's request for an emergency stay of the district court's show cause hearing. Additionally, we deny real party in interest's motion for leave to file an answer to this petition. The clerk of this court shall return, unfiled, the proposed answer, which was provisionally received in this court on April 5, 2012.

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Robert Scotlund Vaile
Willick Law Group
Eighth District Court Clerk