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### Summary of Pan v. Eighth Judicial District Court, 120 Nev. Adv.Op.No.26

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*Nevada Law Journal*

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***Pan v. Eighth Judicial District Court, 120 Nev. Adv.Op.No.26 (May 5, 2004)***<sup>1</sup>

**CIVIL PROCEDURE – WRIT OF MANDAMUS**

**Summary**

When all of the “prerequisites for finality are met, an order that dismisses a case for forum non conveniens is a final judgment that should be reviewed on appeal,”<sup>2</sup> and not via a petition for a writ of mandamus.

**Disposition/Outcome**

Petition for a writ of mandamus to challenge dismissal of a breach of contract action on grounds of forum non conveniens was denied. The writ of mandamus is an inappropriate means of relief. Further, the petitioners failed to meet the burden of stating facts and providing documentation to support their challenge of dismissal by the district court.

**Factual and Procedural History**

The Nevada Supreme Court noted that there was a lack of facts in the lower court transcript and indicated that the dispute in question arose out of the sale of a massage business to Pan and the other petitioners. The petitioners sued for breach of contract, fraud, misrepresentation, and negligence.

The defendants filed a motion to dismiss the suit on forum non conveniens grounds. The district court agreed and dismissed the case. The petitioners filed a petition for a writ of mandamus, requesting that the Nevada Supreme Court direct the district court to vacate the order to dismiss the suit.

**Discussion**

A writ of mandamus is proper in situations where there is no “plain, adequate and speedy legal remedy.”<sup>3</sup> A right to appeal is an “adequate” legal remedy. When the right to appeal exists, a writ of mandamus is not proper. Further, a writ of mandamus is not a proper channel to correct an untimely notice of appeal.

The petition for a writ of mandamus at issue here challenged a final district court order, for which there existed a right to appeal the judgment. As such, a writ of mandamus was not proper relief.

The Nevada Supreme Court clarified the current state of law in Nevada, overruling prior case law to the extent it conflicted with the determination that a petition for a writ of mandamus is an inappropriate method of challenging a final judgment on forum non conveniens grounds. Prior to this decision, the Nevada Supreme Court had not formally stated this and felt it might have sent a potentially confusing signal by allowing writs of mandamus to compel some District Courts to

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<sup>1</sup> By Ronda Heilig

<sup>2</sup> *Pan v. Eighth Judicial District Court*, 120 Nev.Ad.Op.No. 26 (May 5, 2004).

<sup>3</sup> *Id.* at \_\_\_. (citing NEV. REV. STAT. § 34.170 (2001)).

do what the law required of them without evaluating the merits of using a writ of mandamus. The Nevada Supreme Court's clarification held that writs of mandamus are not appropriate when a "plain, adequate and speedy legal remedy exists" such as an appeal.

The Nevada Supreme Court decided to review the petitioner's petition because of the potential confusion created by past decisions; however, this did not help the petitioners, who failed to provide sufficient facts or necessary parts of the prior court record for the Nevada Supreme Court to evaluate. By failing to provide the necessary facts and evidence, petitioners failed to meet their burden of demonstrating that extraordinary relief was warranted. The petition for a writ of mandamus was denied.

### **Conclusion**

A petition for a writ of mandamus is not an appropriate method for challenging a final order for dismissing a case for forum non conveniens when all of the prerequisites for finality are met. A writ of mandamus is proper in situations where there is no "plain, adequate, or speedy legal remedy." A right to appeal is an adequate legal remedy, which must be exercised to challenge a final order.