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Walker v. Second Judicial Dist. Court, 136 Nev. Adv. Op. 80 (Dec. 10, 2020)

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Recommended Citation

Montanez, Luis, "Walker v. Second Judicial Dist. Court, 136 Nev. Adv. Op. 80 (Dec. 10, 2020)" (2020).
Nevada Supreme Court Summaries. 1366.
<https://scholars.law.unlv.edu/nvscs/1366>

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WRITS OF MANDAMUS: NOT A SUBSTITUTE FOR APPEAL

Summary

The Court considered whether to grant petitioners' request for a writ of mandamus to compel the district court to strike opposing counsel's petition for a trial de novo in an arbitration dispute. The Court held that petitioners had not met the requirements for a writ of mandamus petition and therefore denied petitioners' request.

Background

Two distinct personal injury disputes joined cause in this petition. The first stems from injuries Walker sustained when Michaels collided with Walker with her vehicle while Walker rode his bike in the bike lane. The second matter stems from the damages suffered by Ortega after Fritter rear-ended his vehicle at an intersection. Both cases proceeded to Nevada's court-annexed arbitration program. Pursuant to the Nevada Arbitration Rules, Michaels and Fritter each served offers of judgement in their individual cases. Both Walker and Ortega rejected these offers. Eventually, the arbitrator in both Walker's and Ortega's cases found in their favor. The damages awarded substantially exceeded the amount that Michaels and Fritter had each previously offered.

Michaels and Fritter, represented by the same attorney, McMillen, sought trials de novo. Walker and Ortega alleged that McMillen had arbitrated in bad faith by using de novo requests to obstruct and delay the process. Walker and Ortega relied on statistical information purporting to demonstrate the undue frequency of McMillen's requests for trials de novo. Walker and Ortega filed nearly identical motions to strike McMillen's requests for trials de novo based on Nevada Arbitration Rule 22.

The district court consolidated the separate motions to strike and then rejected both, holding that the statistical evidence Walker and Ortega had presented was not sufficient to establish that McMillen had arbitrated in bad faith. Walker and Ortega then filed a writ of mandamus petition to the Nevada Supreme Court demanding that the Court reverse the district court's finding, and that it compels the district court to strike Michael's and Fritter's request for trials de novo.

Discussion

The Nevada Constitution grants the Nevada Supreme Court with the authority to issue writs of mandamus. The traditional writ of mandamus is a remedy distinguishable from others in that it recognizes a legal duty and compels its performance where there is no other remedy at law. Under the Court's constitutional authority, as directed and refined by statute and its corresponding common law, the chief requisites for a writ of mandamus petition are: (1) the petitioner must show a legal right to compel the act sought by the writ; (2) the act must be the plain legal duty of the respondent to perform, without the respondent having the discretion to choose whether or not to do the act; and (3) the petitioner has no other plain, speedy, or adequate

¹ By Luis Montanez.

remedy. Where the Court is asked to use its powers of mandamus on a lower court, significant overlap exists between the first and second requirements.²

If a district court is entrusted with discretion on an issue, then the Nevada Supreme Court can issue a traditional mandamus only where the lower court has *manifestly* abused that discretion or acted arbitrarily or capriciously. Traditional mandamus relief cannot be given where a discretionary lower court decision results from a mere error in judgement; instead, mandamus relief is available only where the law is overridden or misapplied, or when the judgement exercised is manifestly unreasonable, prejudicial, biased, or done in ill will. The Nevada Supreme Court cannot substitute its judgement for the judgement of the district court. Furthermore, the Court wishes not to subvert the district court's right to decide according to its own view of the facts and law; nor does it want to ignore the fact that an adequate remedy will almost always exist, such as an appeal or writ of error. Because mandamus is an extraordinary remedy, the Nevada Supreme Court does not typically employ it where ordinary methods permitted by law already exist to correct any alleged errors. The right to appeal is generally an adequate legal remedy that precludes mandamus relief.

In the present case, the Court concluded that petitioners had failed to demonstrate any of the prerequisites for a traditional writ of mandamus. For the first requirement, petitioners relied on *Gittings v. Hartz* to argue that the frequency of McMillen's requests for trials de novo plainly established his bad faith participation in arbitration as a matter of law. But in *Gittings*, the Court actually rejected on the facts the argument that petitioners raised. Additionally, *Gittings* did not obligate a district court to credit statistical evidence it determined was incomplete and insufficient to establish bad faith. As to the second consideration, the petitioners failed to analyze their argument under the proper standard when claiming that the district court had abused its discretion. The Court explained that the question of counsel's bad faith is one of fact, and therefore must be left to the district court's discretion. As mentioned earlier, the Court's mandamus relief is not available to correct a mere abuse of discretion. The record does not support the idea that the district court's actions amounted to the sort of overtly erroneous conduct that would make the extraordinary relief of mandamus available. This is especially true because *Gittings*, the case upon which petitioners relied heavily, does not clearly require the relief sought by petitioners. Petitioners have neither identified their legal right to have the requests for trials de novo stricken, nor demonstrated that it was the district court's plain legal duty to strike the respondent's petitions. Instead, the petitioners want to convert the writ of mandamus into a writ of error, by having the Nevada Supreme Court review a discretionary order and adjudge it to be erroneous.

Furthermore, the petition likewise fails under the third requirement because there is an obviously adequate remedy at law—namely, that petitioners may appeal when their cases resolve. As prior precedent teaches, a remedy does not fail to be speedy and adequate merely because it would take a longer period of time to resolve than a mandamus proceeding.³ The Nevada Supreme Court is only concerned with the existence of a remedy.⁴

² See Thomas Carl Spelling, *A Treatise on Injunctions and Other Extraordinary Remedies* 1230 (2d ed. 1901) (“In order to entitle a party to mandamus to compel action by the judge of an inferior court ... it is incumbent upon him to show that it is clearly the duty of such judge to do the act sought to be coerced”).

³ *Washoe County v. City of Reno*, 77 Nev. 152, 156, 360 P. 2d 602, 603 (1961) (citing *Steves v. Robic*, 31 A. 2d 797 (Me. 1943)).

⁴ *Id.* at 156, 360 P. 2d at 604.

In some cases, the Nevada Supreme Court has granted mandamus relief, the so-called “advisory” mandamus, where a petitioner presented legal issues of statewide importance requiring clarification, and their decision would promote judicial economy and administration by assisting other jurists, parties, and lawyers.⁵ Given that this is an expansion of the common law doctrine and statutory procedural authorization, the Court takes seriously the judicial limitations placed upon the “advisory” mandamus. The Court explained that in this case the petitioners do not qualify for advisory mandamus for three reasons: (1) the dispute in district court was factual, not legal, and sufficient evidence supports the district court’s factual finding of no bad faith; (2) the disagreement does not present a serious issue of substantial public policy or involve important precedential questions of statewide interests; and (3) a review of the factual question in this case would not promote judicial economy.

Conclusion

Because petitioners did not meet the requirements for a writ of mandamus, nor did they offer any cogent, compelling reason for the Court to issue an “advisory” mandamus, the Court denied their petition for a writ of mandamus and lifted the stays imposed on the underlying proceedings in district court.

⁵ MDC Rests., LLC v. Eighth Judicial Dist. Court, 134 Nev. 315, 319, 419 P.3d 148, 152 (2018); *see also* Archon Corp. v. Eighth Judicial Dist. Court, 133 Nev. 816, 820, 407 P.3d 702, 706 (2017).