

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK P. SILVER, M.D.; AND FRANK P.
SILVER, M.D., A PROFESSIONAL
CORPORATION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK; AND THE
HONORABLE KATHY A. HARDCASTLE,
DISTRICT JUDGE,

Respondents,

and

CECELIA DIAZ, AS SPECIAL
ADMINISTRATRIX OF THE ESTATE OF
STEPHANIE T. BROCK, DECEASED;
KERRY D. BROCK, SR., INDIVIDUALLY,
AND AS HEIR OF THE ESTATE OF
STEPHANIE T. BROCK, DECEASED;
KERRY D. BROCK, SR., AS PARENT AND
NATURAL GUARDIAN OF KERRY
DEWAYNE BROCK, JR., A MINOR,
INDIVIDUALLY AND AS HEIR TO THE
ESTATE OF STEPHANIE T. BROCK,
DECEASED; KERRY D. BROCK, AS
PARENT AND NATURAL GUARDIAN OF
MAHOGANY THERESE CHALIZE BIAS, A
MINOR, INDIVIDUALLY AND AS HEIR TO
THE ESTATE OF STEPHANIE T. BROCK,
DECEASED,

Real Parties in Interest.

No. 60203

FILED

MAR 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Angers*
DEPUTY CLERK

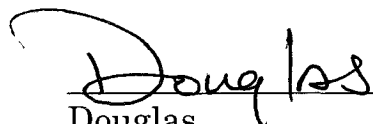
ORDER DENYING PETITION FOR WRIT OF MANDAMUS

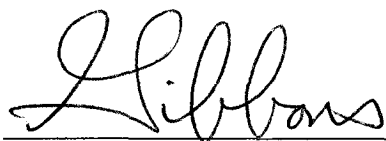
This original petition for a writ of mandamus challenges a district court order denying a motion for summary judgment in a medical malpractice action.

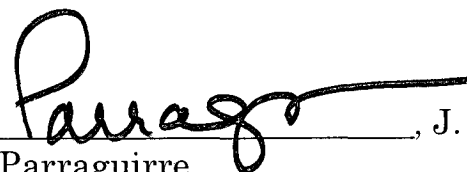
A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Mandamus is an extraordinary remedy, and whether a petition will be considered is within our sole discretion. Smith v. District Court, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Further, mandamus will not issue when the petitioners have a plain, speedy, and adequate remedy at law, NRS 34.170, and we have consistently held that an appeal is generally an adequate legal remedy precluding writ relief. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

Having reviewed the petition and its supporting documents, we are not persuaded that writ relief is warranted. In particular, there are material issues of fact concerning when the statute of limitations commenced to run, Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (stating that summary judgment is only appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law), and petitioners have an adequate remedy in the form of an appeal from any final judgment. Pan, 120 Nev. at 224, 88 P.3d at 841. Accordingly, we

ORDER the petition DENIED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Kathy A. Hardcastle, District Judge
John H. Cotton & Associates, Ltd.
Ralph A. Schwartz
Eighth District Court Clerk