

February 25, 2009

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker  
Clerk of Court

FOR THE TENTH CIRCUIT

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In re:

CHRISTOPHER E. STONE,

Petitioner.

No. 09-1050

(D.C. No. 01:08-CV-02522-REB-KMT)

(D. Colo.)

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**ORDER**

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Before **KELLY, BRISCOE**, and **LUCERO**, Circuit Judges.

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Petitioner Christopher E. Stone has filed a pro se petition for a writ of mandamus, seeking an order of this court compelling the United States District Court for the District of Colorado to vacate its pretrial rulings, to grant his motions, and to deny defendants’ motions in his underlying district-court case, which is premised in part on the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301-4335.

Mandamus is a “drastic” remedy, “to be invoked only in extraordinary situations.” *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980). To grant mandamus, this court “must find either (1) that the district court acted wholly without jurisdiction, or (2) that the district court so clearly abused its discretion as to constitute usurpation of power.” *United States v. Carrigan*, 804 F.2d 599, 602 (10th Cir. 1986). This court generally considers five nonconclusive

factors in considering mandamus relief: whether (1) the party has alternative means to secure relief; (2) the party will be damaged “in a way not correctable on appeal”; (3) “the district court’s order constitutes an abuse of discretion”; (4) the order “represents an often repeated error and manifests a persistent disregard of federal rules”; and (5) the order raises “new and important problems or issues of law of the first impression.” *Pacificare of Okla., Inc. v. Burrage*, 59 F.3d 151, 153 (10th Cir. 1995).

Petitioner asserts that the district court has reached numerous pretrial decisions in violation of USERRA. Although USERRA “is to be liberally construed for the benefit of those who left private life to serve their country,” this principle is “not without . . . limits.” *Coffman v. Chugach Support Servs., Inc.*, 411 F.3d 1231, 1238 (11th Cir. 2005) (quotation omitted). We do not ordinarily use mandamus to scrutinize or interfere with a district court’s discretionary pre-trial decisions and we will not do so in this matter. *See Paramount Film Dist. Corp. v. Civic Ctr. Theatre, Inc.*, 333 F.2d 358, 361 (10th Cir. 1964). Further, mandamus is “not [to] be used as a substitute for the regular appeals process,” *Cheney v. U.S. Dist. Court. for D. C.*, 542 U.S. 367, 380-81 (2004), which precludes mandamus relief for errors that could eventually be corrected on appeal. The rulings that disturb Mr. Stone are all committed to district court’s sound discretion, there is no indication in the record that the court clearly abused its discretion, and any possible errors may be addressed on appeal.

The petition for writ of mandamus is DENIED. To the extent Mr. Stone's submission seeks a stay pending this court's consideration of his mandamus petition, the request is DENIED as moot. The request for waiver of filing fees and court costs and waiver of hard-copy filing requirements is GRANTED.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk