

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 28, 2012

Elisabeth A. Shumaker
Clerk of Court

In re:

PATRICIA MARTINEZ,

Petitioner.

No. 12-2125
(D.C. No. 1:09-CV-00281-JB-KBM)
(D. N.M.)

ORDER

Before **MURPHY, O'BRIEN, and TYMKOVICH**, Circuit Judges.

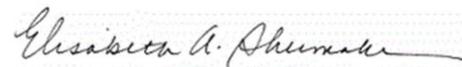
On August 6, 2012, Patricia Martinez filed a pro se petition for writ of mandamus. She seeks an order directing the district court to rule on her motion to reconsider discovery rulings and her motion to strike a magistrate judge's report and recommendation to dismiss her case with prejudice. On August 27, she filed a motion to abate our consideration of her mandamus petition, stating that the district court recently ruled on the motion to reconsider, and she would like to present additional argument and materials regarding the denial of her motion to reconsider and "some light additional pleadings." Mot. to Abate at 2. The motion to strike remains pending.

"[A] writ of mandamus is a drastic remedy, and is to be invoked only in extraordinary circumstances." *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (internal quotation marks omitted). It "is not a substitute for an appeal." *Id.* "[W]e will grant a writ only when the district court has acted wholly

without jurisdiction or so clearly abused its discretion as to constitute usurpation of power.” *Id.* (internal quotation marks omitted). “Three conditions must be met before a writ of mandamus may issue”: (1) that the party “have no other adequate means to attain the relief he desires”; (2) that the party’s “right to the writ is clear and indisputable”; and (3) that the court “be satisfied that the writ is appropriate under the circumstances.” *Id.* at 1187 (internal quotation marks omitted).

The request for an order directing the district court to rule on the motion to reconsider is moot because the district court has ruled on that motion. As to the motion to strike and the abatement, the circumstances here do not warrant the issuance of an extraordinary writ or an abatement. Ms. Martinez has not shown she has no other adequate means to attain the relief she desires; an appeal from a final judgment is adequate. Accordingly, we DENY the petition for a writ of mandamus and DENY the motion to abate.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk