

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT FRERE,
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF LYON,
AND THE HONORABLE LEON
ABERASTURI, DISTRICT JUDGE,
Respondents,
and
DANIEL NEISINGH,
Real Party in Interest.

No. 52500

FILED

OCT 07 2008

TRACIE W. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus seeks an order directing the district court to vacate a partial summary judgment and to strike real party in interest's answer and counterclaim as a discovery sanction.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.¹ Although the decision to entertain a writ petition is addressed to our sole discretion,² we generally adhere to the proposition that an extraordinary writ will issue only when the petitioner has no plain, speedy, and adequate legal remedy.³


¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

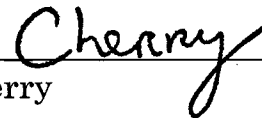
²Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

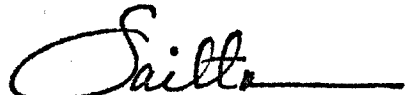
³Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004); NRS 34.170.

We have consistently held that an appeal typically affords an adequate legal remedy, precluding writ relief.⁴ Thus, we conclude that because petitioner, if aggrieved, may appeal from the district court's final judgment, he has an adequate legal remedy.⁵ Further, although petitioner suggests that an appeal would not be speedy, we note that trial is imminent and that petitioner may seek to have the appeal expedited by demonstrating need therefor. Accordingly, as petitioner has an adequate and speedy legal remedy precluding writ relief, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Leon Aberasturi, District Judge
Law Office of Karen L. Winters
Robison Belaustegui Sharp & Low
Lyon County Clerk

⁴Pan, 120 Nev. at 224, 88 P.3d at 841; see also D.R. Horton v. Dist. Ct., 123 Nev. ___, ___, 168 P.3d 731, 736 (2007) (explaining that, to determine whether a future appeal is sufficiently adequate and speedy, this court will consider the underlying proceedings' status, the types of issues raised in the writ petition, and the opportunity for meaningful appellate review of the issues presented).

⁵See NRAP 3A(b)(1).