

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNION PACIFIC RAILROAD
COMPANY, A CORPORATION,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE JEROME T.
TAO, DISTRICT JUDGE,

Respondents,

and

FRANK J. MCBRIDE,
Real Party in Interest.

No. 59073

FILED

APR 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Malone*
DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order granting a request for exemption from arbitration.

Here, petitioner seeks extraordinary writ relief requiring the district court to order that the underlying district court action be resubmitted to the mandatory arbitration program. A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Writ relief is generally not available, however, when the petitioner has a plain, speedy, and adequate remedy at law. See NRS 34.170; NRS 34.330; International Game Tech.,

124 Nev. at 197, 179 P.3d at 558. Moreover, it is within this court's discretion to determine if a writ petition will be considered. Smith, 107 Nev. at 677, 818 P.2d at 851. Petitioner bears the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Although we recognize that real party in interest's request for an exemption from arbitration was extremely untimely, the arbitration rules are intended to provide the arbitration commissioner and the district court with "considerable discretion" in their interpretation and application of the rules, NAR 2(C), and the arbitration commissioner and the district court are specifically authorized to grant an untimely request for an exemption, although the requesting party may be subject to sanctions. NAR 5(A). Here, the arbitration commissioner granted the exemption request but ordered that real party in interest's counsel would be required to pay all fees and costs of the arbitrator, and the district court affirmed the commissioner's decision. Because this resolution was permitted by the arbitration rules, we are not persuaded that the district court was required to resubmit the underlying action to arbitration, or that the district court acted in excess of its jurisdiction by exempting the case from arbitration. See International Game Tech., 124 Nev. at 197, 179 P.3d at 558; Smith, 107 Nev. at 677, 818 P.2d at 851. Accordingly, we

ORDER the petition DENIED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Jerome T. Tao, District Judge
Raleigh & Hunt, P.C.
Dubowsky Law Office, Chtd.
C. Marshall Friedman
Kenneth E. Rudd
Eighth District Court Clerk