

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS A. FOSS,
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF LYON;
AND THE HONORABLE WILLIAM
ROGERS,

Respondents,

and

GEORGE LEMAITRE; AND PATRICIA
FIETTA,

Real Parties in Interest.

No. 59548

FILED

DEC 13 2012

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

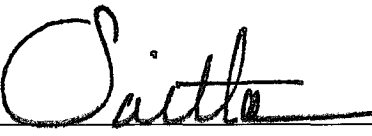
ORDER DENYING PETITION FOR WRIT OF MANDAMUS


This original proper person petition for a writ of mandamus challenges a district court order dismissing an action.

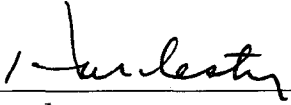
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). It is within our sole discretion to determine if a writ petition will be considered. 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; International Game Tech., 124 Nev. at 197, 179 P.3d at 558. This court has consistently held that an appeal is typically an adequate legal remedy precluding writ relief. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

Having considered the petition, we conclude that our intervention by way of extraordinary relief is not warranted as petitioner had an adequate legal remedy in the form of an appeal from the district court's dismissal of his action. See NRAP 21(b)(1); Pan, 120 Nev. at 224-25, 88 P.3d at 841 (explaining that "writ relief is not available to correct an untimely notice of appeal"). Accordingly, we

ORDER the petition DENIED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. William G. Rogers, District Judge
Thomas A. Foss
Law Offices of John P. Schlegelmilch, Ltd.
Lyon County Clerk