## IN THE SUPREME COURT OF THE STATE OF NEVADA

GIOVANNI VARGAS-ANTIGUA, Petitioner,

VS.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MICHAEL VILLANI, DISTRICT
JUDGE,
Respondents,
and
DIANE GUTIERREZ,

Real Party in Interest.

No. 64343

FILED

DEC 1 6 2013

CLERK OF SUPREME COURT
BY DEPUTY CLERK

## ORDER DENYING PETITION FOR WRIT OF PROHIBITION OR MANDAMUS

This is an original petition for a writ of prohibition or mandamus challenging a district court order denying petitioner's motion to set aside a default judgment and an oral ruling denying reconsideration of the motion.

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. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). 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; Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Writ relief is typically not available, however, when the petitioner has a plain, speedy, and

adequate remedy at law. See NRS 34.170; NRS 34.330; Int'l Game Tech., 124 Nev. at 197, 179 P.3d at 558. Generally, an appeal is an adequate legal remedy precluding writ relief. Pan v. Eighth Judicial Dist. Court, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Whether to consider a writ petition is within this court's discretion. Smith, 107 Nev. at 677, 818 P.2d at 851. Petitioner bears the burden of demonstrating that extraordinary relief is warranted. Pan, 120 Nev. at 228, 88 P.3d at 844.

Having considered the petition and appendix, we deny the petition because petitioner has an adequate legal remedy in the form of an appeal from any adverse judgment. See NRAP 21(b)(1); see also NRS 34.170; NRS 34.330; Pan, 120 Nev. at 228, 88 P.3d at 844.

It is so ORDERED.

Pickering, C.J.

Hardesty

Cherry, J.

cc: Hon. Michael Villani, District Judge Springel & Fink Prince & Keating, LLP Maier Gutierrez Ayon, PLLC Eighth District Court Clerk