

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 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
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

