

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. MITCHELL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KATHLEEN E. DELANEY, DISTRICT
JUDGE,
Respondents,
and
HEARTLAND BANK,
Real Party in Interest.

No. 64709

FILED

JAN 21 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Lindeman*
DEPUTY CLERK

*ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION*

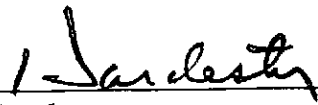
This original petition for a writ of mandamus or prohibition challenges a district court order dismissing the case based on a contractual choice of venue provision.

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. NRS 34.320. Mandamus and prohibition are extraordinary remedies, and whether a petition will be considered is within our sole discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Neither mandamus nor prohibition will issue when the petitioner has a plain, speedy, and

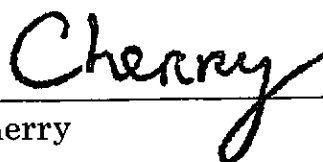
adequate remedy at law, NRS 34.170; NRS 34.330, and we have consistently held that an appeal is generally an adequate legal remedy precluding writ relief. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

Having considered the petition and appendix, we conclude that our intervention by way of extraordinary relief is not warranted. NRAP 21(b)(1); *Smith*, 107 Nev. at 677, 818 P.2d at 851. Specifically, petitioner has an adequate legal remedy in the form of an appeal, *Pan*, 120 Nev. at 224, 88 P.3d at 841, and has already filed an appeal from the challenged district court order in Docket No. 64695. Accordingly, we

ORDER the petition DENIED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Kathleen E. Delaney, District Judge
Poli & Ball, P.L.C.
Gordon Silver
Eighth District Court Clerk