

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH BERBERICH, TRUSTEE,
ON BEHALF OF 4499 WEITZMAN
PLACE TRUST, A NEVADA TRUST,
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JOANNA KISHNER, DISTRICT
JUDGE,

Respondents,

and

SOUTHERN HIGHLANDS
COMMUNITY ASSOCIATION, A
NEVADA NON-PROFIT
CORPORATION; MTC FINANCIAL
INC., A CALIFORNIA CORPORATION
REGISTERED IN NEVADA; OLYMPIA
MANAGEMENT SERVICES, LLC, A
NEVADA LIMITED LIABILITY
CORPORATION; FEDERAL HOME
LOAN MORTGAGE CORPORATION, A
FEDERALLY CHARTERED
CORPORATION; AND CAM REAL
ESTATE XIV, LLC, A DELAWARE
LIMITED LIABILITY COMPANY,
Real Parties in Interest.

No. 72130

FILED

JAN 20 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION

FOR WRITS OF MANDAMUS AND PROHIBITION

This is an original petition for writs of mandamus and prohibition challenging the district court's decision to strike various documents in the underlying case.




17-900116

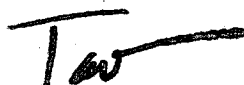
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion. See NRS 34.160; *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). We 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. Neither mandamus nor prohibition will issue when the petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170; NRS 34.330. Both mandamus and prohibition are extraordinary remedies, and whether a petition for extraordinary relief will be considered is solely within our discretion. See *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). It is petitioner's burden to demonstrate that our extraordinary intervention is warranted. See *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Based on our review of the petition and supporting documents, we conclude that petitioner has not demonstrated that our intervention by way of extraordinary writ relief is warranted. Notably, to the extent petitioner suggests that the district court's decision to strike documents that were filed in the underlying case will somehow interfere with his ability to obtain effective appellate review by rendering him unable to provide or reference those documents to an appellate court, that argument lacks merit. Indeed, in asserting that these documents were improperly stricken, petitioner has included and referenced file-stamped copies of certain of these documents in the appendix submitted in support of this petition, demonstrating that he would likewise be able to provide the documents in any appeal from the underlying action.

And with regard to petitioner's challenge to the striking of these documents, given the procedural posture of this matter, we conclude that petitioner has a speedy and adequate remedy available in the form of an appeal from the final judgment in the underlying case, such that our intervention by way of extraordinary writ relief is not warranted. See NRS 34.170; NRS 34.330; *Pan*, 120 Nev. at 224, 88 P.3d at 841 (providing that an appeal is generally a speedy and adequate remedy that precludes writ relief). Accordingly, we

ORDER the petition DENIED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Joanna Kishner, District Judge
Brauer, Driscoll, Sun and Associates LLC
Aldridge Pite, LLP
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Burke, Williams & Sorensen, LLP
Kemp, Jones & Coulthard, LLP
Eighth District Court Clerk

¹In light of our resolution of this matter, we deny as moot petitioner's emergency motion for stay.