

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS G. GIBSON, II,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
MATHEW HARTER, DISTRICT JUDGE,  
Respondents,  
and  
JILL L. GIBSON,  
Real Party in Interest.

No. 72617

**FILED**

APR 19 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION*


This is an original petition for a writ of mandamus or prohibition challenging a district court order establishing child custody.

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). 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). 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 v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Writ relief is typically not available 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. And “the right to appeal is generally an adequate legal remedy that precludes writ relief.” *Pan*, 120 Nev. at 224, 88 P.3d at 841. Here, the challenged order established custody of the parties’ minor child, and thus, petitioner had an adequate legal remedy in the form of appeal. See NRAP 3A(b)(7) (providing for an appeal from an order “that finally establishes or alters the custody of minor children”). And although petitioner did not exercise his right to an appeal, “writ relief is not available to correct an untimely notice of appeal.” *Pan*, 120 Nev. at 224-25, 88 P.3d at 841.

As petitioner had a speedy and adequate legal remedy, we conclude that writ relief is not warranted, and we deny the petition. See NRAP 21(b)(1); *Smith*, 107 Nev. at 677, 818 P.2d at 851.

It is so ORDERED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Mathew Harter, District Judge  
Valarie I. Fujii & Associates  
James S. Kent  
Eighth District Court Clerk

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<sup>1</sup>The Honorable Abbi Silver, Chief Judge, voluntarily recused herself from participation in the decision on this matter.