IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WYKOFF NEWBERG CORPORATION, A NEVADA CORPORATION; AND INTERNATIONAL SMELTING COMPANY, A NEVADA CORPORATION,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE GLORIA STURMAN, DISTRICT JUDGE,
Respondents,
and
IMAGINE NATION ENTERTAINMENT CORPORATION, A NEVADA CORPORATION; AND MOSAIC LAND, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Real Parties in Interest.

No. 74998

FILED
MAR 06 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus seeks an order directing the district court to cancel and expunge a lis pendens.

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 petitioners have a plain, speedy, and adequate remedy at law. *See* NRS 34.170; *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558. Moreover, whether to consider a writ petition is within this court's discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818

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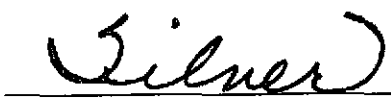
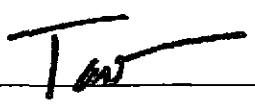
P.2d 849, 851 (1991). And petitioners bear the burden of demonstrating that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition, we conclude that petitioners have failed to demonstrate that extraordinary writ relief is warranted. *See id.* In particular, although the supreme court has recognized that there is no plain, speedy, and adequate remedy from the district court's improper denial of a motion to cancel and expunge a lis pendens and that a writ petition is thus the proper vehicle for challenging such a determination, *see Levinson v. Eighth Judicial Dist. Court*, 109 Nev. 747, 752, 857 P.2d 18, 21 (1993), the district court in the present case has yet to rule on petitioners' underlying motion. Thus, our consideration of petitioners' petition is premature, as the district court should address their motion in the first instance. And because the district court scheduled a hearing to do exactly that for April 10, 2018, petitioners have a plain, speedy, and adequate remedy in the ordinary course of the law. We note, however, that if petitioners are aggrieved by the district court's resolution of their motion, nothing in this order precludes them from refiling their petition. Given the foregoing, we deny the petition. *See* NRAP 21(b)(1); *Smith*, 107 Nev. at 677, 818 P.2d at 851.

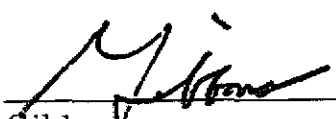
It is so ORDERED.



_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Gloria Sturman, District Judge
Fennemore Craig, P.C./Las Vegas
Ellsworth & Bennion Chtd.
Eighth District Court Clerk