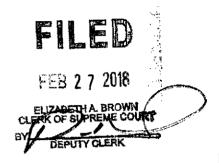
## IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERVIN MIDDLETON, JR., Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE, Respondents. No. 74779



## ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges an order granting an ex parte motion to enlarge time to answer a complaint.

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). A writ of mandamus will not issue, however, if the petitioner has 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. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. See Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Petitioner bears 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).

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Having considered the documents before us, we conclude that petitioner has failed to demonstrate that extraordinary writ relief is warranted. See id. Accordingly, we deny the petition. See NRAP 21(b)(1); Smith, 107 Nev. at 677, 818 P.2d at 851.

It is so ORDERED.

Silver, C.J.

Tao

Gibbons

J.

Gibbons

cc: Hon. Jerry A. Wiese, District Judge Ervin Middleton, Jr. Attorney General/Carson City Eighth District Court Clerk