

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MANUEL GUTIERREZ,
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,

MICHAEL STROTHER,
Real Party in Interest.

No. 74637

FILED

FEB 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER DENYING PETITION FOR
WRIT OF PROHIBITION OR MANDAMUS*

This original petition for a writ of prohibition or mandamus seeks to vacate a district court order denying a motion to set aside a default.


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). This court has discretion as to whether to entertain a petition for extraordinary relief and will not do so when the petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170; NRS 34.330; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden

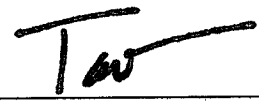
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of demonstrating that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition, we conclude that petitioner has a plain, speedy, and adequate remedy available in the form of an appeal from the final judgment in the underlying case. *See id.* at 224, 88 P.3d at 841 (“[T]he right to appeal is generally an adequate legal remedy that precludes writ relief.”); NRAP 3A(b)(1) (allowing an appeal from a final judgment). As such, petitioner has failed to demonstrate that extraordinary writ relief is warranted. *See Pan*, 120 Nev. at 228, 88 P.3d at 844. Accordingly, we deny the petition. *See NRAP 21(b)(1); D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Joanna Kishner, District Judge
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP/Las Vegas
Schuetze & McGaha, P.C.
Eighth District Court Clerk