

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

UNITED SERVICES AUTOMOBILE
ASSOCIATION,

Petitioner,

vs.

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

Respondents,

and

JOHN ROBERTS,

Real Party in Interest.

No. 83355-COA

FILED

FEB 17 2022

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

*ORDER DENYING PETITION FOR WRIT OF MANDAMUS, OR IN THE
ALTERNATIVE, WRIT OF PROHIBITION*

This original petition for a writ of mandamus, or in the alternative, writ of prohibition,¹ challenges a district court order affirming and adopting the discovery commissioner's report and recommendations

¹We note that "[p]rohibition is a proper remedy to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioners bear the burden of demonstrating that such extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); NRAP 21(a)(3) (providing requirements for petitions). Petitioners failed to cogently argue why a writ of prohibition would be appropriate here. Further, as petitioner alleges the district court abused its discretion, a writ of mandamus may be the more appropriate vehicle, as discussed by this court in *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 223 n.3, 467 P.3d 1, 4 n.3 (Ct. App. 2020) (finding mandamus relief more appropriate when it was "controlling an arbitrary exercise of discretion," as opposed to "concluding that the district court's discovery order was outside its jurisdiction").

compelling certain discovery without a hearing pursuant to NRC 16.3(c)(3)(A). Petitioner argues that the district court failed to properly analyze relevance and proportionality, and issue findings, as required by the 2019 amendments to NRC 26(b)(1) and this court's recent decision in *Venetian*, 136 Nev. 221, 467 P.3d 1.

Having considered the petition and its supporting documents, we are not persuaded that our extraordinary and discretionary intervention is warranted. *See Pan*, 120 Nev. at 228, 88 P.3d at 844; *Smith*, 107 Nev. at 677, 818 P.2d at 851 (“Mandamus is a proper remedy to compel performance of a judicial act when there is no plain, speedy, and adequate remedy at law in order to compel the performance of an act which the law requires as a duty resulting from office.”); *see also* NRS 34.160 (providing guidance regarding when appellate courts may issue a writ). Writ relief is typically not afforded to review discovery orders “unless the challenged discovery order is *one that is likely to cause irreparable harm*, such as a blanket discovery order, issued without regard to relevance of the information sought, or an order that requires disclosure of privileged information.” *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012) (emphasis added) (“Discovery matters are within the district court’s sound discretion, and we will not disturb a district court’s ruling regarding discovery unless the court has clearly abused its discretion.”); *Valley Health Sys., LLC v. Eighth Judicial Dist. Court of Nev.*, 127 Nev. 167, 171 n.6, 252 P.3d 676, 679 n.6 (2011) (“[W]e have long held that where the petitioner’s claim is only that there is no right of discovery, a writ will not issue because a direct appeal is an adequate remedy. . . . Therefore, a writ is not appropriate to address [the] argument that the district court’s order would lead to the discovery of irrelevant

material.”); see also *Okada v. Eighth Judicial Dist. Court*, 134 Nev. 6, 10, 408 P.3d 566, 570 (2018) (“[G]enerally this court will not consider writ petitions challenging orders denying discovery, as such discretionary rulings typically may be adequately redressed on direct appeal from an adverse final judgment.”).

Here, petitioner fails to argue how the discovery requests will cause the type of irreparable harm recognized by the Nevada Supreme Court as warranting writ relief. Nowhere in the petition does petitioner argue that the district court compelled a blanket discovery of opposing party’s requests, without regard to relevance or proportionality,² or that the information sought included the disclosure of privileged information.³

Further, after our review of the record, we conclude that the district court did not clearly abuse its discretion in adopting the discovery commissioner’s report and recommendations, as the discovery commissioner did in fact consider both relevance and proportionality as required under the plain meaning of NRCP 26(b)(1), which is evident in her verbal determinations at the hearing and based on the limitations she placed on several of the discovery requests. The facts and circumstances presented by this writ petition are distinct from those in the *Venetian* case, where the district court failed to consider proportionality *whatsoever*, and in rejecting the discovery commissioner’s recommendations, the court also

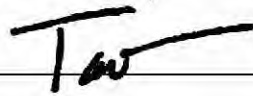
²We note that petitioner admits as much in its reply: “USAA does not contend that the Discovery Commissioner did not *consider* relevance and proportionality, but that her decision on relevance and proportionality was not correct as to the disputed discovery and/or failed to consider the appropriate standards under the revised NRCP 26(b)(1).”

³We further note that the discovery commissioner placed a protective order on several of the document requests being contested in this petition.

denied the motion for a protective order, which would have resulted in the "improper disclosure of the Venetian's guests' private information." 136 Nev. at 223-24, 226 n.9, 467 P.3d at 4-5, 6 n.9. Here, the same concerns are not present. Accordingly, we

ORDER the petition DENIED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Nadia Krall, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
The Schnitzer Law Firm
Eighth District Court Clerk