

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
CHIEF THOMAS LAWSON; CHARLES
DANIELS, DIRECTOR; AND THE
STATE OF NEVADA DEPARTMENT
OF CORRECTIONS,
Respondents.

No. 84923-COA

COURT

FILED

MAR 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ferrill Joseph Volpicelli appeals from orders of the district court denying a petition for a writ of mandamus, a motion for preliminary injunction, and a motion for reconsideration. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Volpicelli argues that the district court erred by denying his January 24, 2022, petition. In his petition, Volpicelli sought an order directing respondents to provide him with an accounting of the amount of restitution already provided to each victim in his criminal matter and notification of any additional restitution payments made to the victims. Volpicelli also requested the district court hold a restitution hearing to determine the appropriate restitution for any of the victims in his criminal matter.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or

station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus will not issue, however, if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. "Petitioners carry 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). "We generally review a district court's grant or denial of writ relief for an abuse of discretion." *Koller v. State*, 122 Nev. 223, 226, 130 P.3d 653, 655 (2003).

We agree with the district court's conclusion that a writ of mandamus is not the proper remedy for the underlying challenge. The district court concluded that Volpicelli did not demonstrate respondents failed to perform an act which the law requires as a duty resulting from an office, trust, or station, and it found that Volpicelli did not demonstrate that mandamus relief was necessary to control a manifest abuse or arbitrary or capricious exercise of discretion. Volpicelli therefore failed to meet his burden to demonstrate that extraordinary relief was warranted. Accordingly, we discern no abuse of discretion in the district court's decision to deny Volpicelli's petition.

Volpicelli next argues that the district court erred by denying his January 24, 2022, motion for a preliminary injunction. In his motion, Volpicelli claimed that respondents failed to provide him with an accounting of the amount of restitution already provided to each victim in his criminal matter. Volpicelli therefore sought an order prohibiting respondents from

deducting any additional funds from his inmate account to pay victim restitution and an order directing respondents to return any funds already deducted from his inmate account to pay victim restitution.


“The decision to grant or deny a preliminary injunction is within the sound discretion of the trial court, and that discretion will not be disturbed absent abuse.” *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001). “A party seeking the issuance of a preliminary injunction bears the burden of establishing (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party’s conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy.” *Id.* at 408, 23 P.3d at 246. While we review the district court’s factual findings for substantial evidence, we review questions of law de novo. *Id.* at 407, 23 P.3d at 246.

We agree with the district court’s conclusion that Volpicelli was not entitled to injunctive relief. Volpicelli was unable to establish that he had a likelihood of success regarding his request for mandamus relief or that there was a reasonable probability that he would suffer irreparable harm for which compensatory damages are an inadequate remedy. Accordingly, the district court did not abuse its discretion by denying Volpicelli’s motion for a preliminary injunction.

Finally, Volpicelli contends that the district court erred by denying his May 4, 2022, motion for reconsideration. Having considered his arguments and the record on appeal, we conclude that the district court did not abuse its discretion by denying that motion. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010)

(explaining that a motion for reconsideration is reviewed for an abuse of discretion when appealed with the underlying judgment). Accordingly, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe District Court Clerk