

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY HO, AN INDIVIDUAL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
MONICA TRUJILLO,
Respondents,
and
CYNTHIA M. HERNANDEZ A/K/A
CINDY HERNANDEZ, AN
INDIVIDUAL,
Real Party in Interest.

No. 91032-COA

ORDER DENYING PETITION

This is an original petition for a writ of mandamus or, in the alternative, prohibition seeking to compel the district court to vacate its order denying petitioner's motion to dismiss. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, NRS 34.160, or to control an arbitrary or capricious exercise of discretion, *Int1 Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition arrests the proceedings of a tribunal that is acting in excess of, or without, jurisdiction. NRS 34.320; *Cunningham v. Eighth Jud. Dist. Ct.*, 102 Nev. 551, 560, 729 P.2d 1328, 1334 (1986); *Int1 Game Tech.*, 124 Nev. at 197, 179 P.3d at 558-59 (recognizing this court will generally decline to consider writ petitions challenging a district court order denying a motion to dismiss). The decision to entertain a petition for

extraordinary writ relief is within our sole discretion, and the petitioner has the burden of demonstrating that such relief is warranted. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition, appendix, answer, and reply, we conclude that petitioner has not met his burden of demonstrating that our extraordinary intervention is warranted in this matter. *Id.*; see also *Edwards v. Direct Access, LLC*, 121 Nev. 929, 933, 124 P.3d 1158, 1160 (2005) (holding that to dismiss “a case based on lack of subject matter jurisdiction, it must appear to a legal certainty that the [damages are] worth less than the jurisdictional amount” (alteration in original) (internal quotation marks omitted)). Therefore, we decline to exercise our discretion to further consider this petition. *Pan*, 120 Nev. at 228, 88 P.3d at 844.

Accordingly, we

ORDER the petition DENIED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Monica Trujillo, District Judge
Relief Lawyers LLC
Hamilton Law
Eighth District Court Clerk