

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
CHERYL MOSS, DISTRICT JUDGE,
FAMILY COURT DIVISION,
Respondents,
and
CISILIE A. PORSBOLL F/K/A CISILIE
A. VAILE,
Real Party in Interest.

No. 55446

FILED

DEC 27 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court written order and oral rulings regarding an award of attorney fees and costs.

A writ of mandamus may be issued “to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station.” International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); NRS 34.160. 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. NRS 34.320; Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). Writ relief is generally not available when a plain, speedy, and adequate legal remedy exists. NRS 34.170; NRS 34.330; International Game Tech., 124 Nev. at 197, 179 P.3d at 558. The availability of an appeal usually constitutes a speedy and adequate legal remedy precluding writ relief. International Game Tech., 124 Nev. at 197, 179 P.3d at 558.

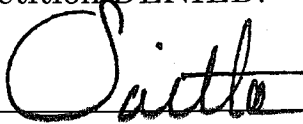
On April 5, 2010, the district court entered an appealable order resolving the issues underlying this writ petition with regard to the enforceability of a 2003 district court judgment for attorney fees and a 2008 federal court judgment related to the same fees. See NRAP 3A(b)(8) (providing for an appeal from a special order entered after final judgment); Gumm v. Mainor, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (explaining that an appealable special order after a final judgment must affect “the rights of some party to the action, growing out of the judgment previously entered”); Smith v. Crown Financial Services, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995) (noting that a district court order awarding attorney fees and costs was a special order made after final judgment). Additionally, to the extent that the writ petition challenges interim orders and rulings made before the April 5, 2010, order, those orders would have been reviewable on appeal from the April 5, 2010, order.

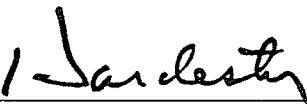
Although petitioner filed an appeal from the April 5, 2010, order, he failed to timely file a civil proper person appeal statement or otherwise communicate with this court, resulting in the dismissal of that appeal. Vaile v. Porsboll, Docket No. 55911 (Order Dismissing Appeal, September 14, 2010). Thus, writ relief is not appropriate here, as petitioner had a plain, speedy, and adequate legal remedy in which to raise the issues identified in his writ petition. See International Game Tech., 124 Nev. at 197, 179 P.3d at 558. The fact that petitioner failed to take advantage of this legal remedy does not render writ relief appropriate in this case. Cf. Pan v. Dist. Ct., 120 Nev. 222, 224-25, 88 P.3d 840, 841

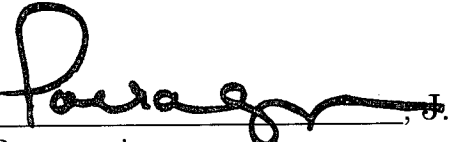
(2004) (providing that writ relief is not available to correct an untimely notice of appeal).

Accordingly, we

ORDER the petition DENIED.¹


_____, C.J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

¹In light of this order, we lift the stay of the district court proceedings in District Court Case No. D230385, entered by this court on July 20, 2010. We further direct the clerk of this court to file the following documents: petitioner's correction of affidavits, provisionally received in this court on February 22, 2010; petitioner's motion to file a supplemental exhibit, provisionally received in this court on March 3, 2010; petitioner's motion to file a reply and exhibits, provisionally received in this court on April 27, 2010; petitioner's renewed emergency motion for a stay, provisionally received in this court on July 12, 2010; petitioner's opposition to real party in interest's request for a partial or total lifting of the stay, provisionally received in this court on August 11, 2010; and petitioner's request for judicial notice, provisionally received in this court on November 12, 2010.

Petitioner's March 3, 2010, motion to file a supplemental exhibit is granted, and we direct the clerk of this court to detach and file the supplemental exhibit attached to that motion. We also grant petitioner's April 27, 2010, motion to file a reply and exhibits, and direct the clerk of this court to detach and file the reply and exhibits submitted with that motion. In addition, we deny as moot petitioner's July 12, 2010, renewed motion for a stay and real party in interest's September 14, 2010, request for a partial or total lifting of the stay. We also deny as moot, in light of this order, real party in interest's July 28, 2010, motion for an extension of time to file an opposition to petitioner's motion for a stay.

Finally, we deny petitioner's November 12, 2010, request for this court to take judicial notice of a California court order declining to register and modify a 2008 Nevada order regarding child support.

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Robert Scotlund Vaile
Willick Law Group
Eighth District Court Clerk