

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAUL ALANIZ,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE LISA
M. BROWN, DISTRICT JUDGE,
Respondents,
and
NANCY WEINSTEIN,
Real Party in Interest.

No. 81677-COA

FILED

OCT 16 2020

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

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

This original petition for a writ of mandamus or, alternatively, prohibition challenges a district court order regarding spousal support.¹

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

¹Although the petition for writ of mandamus or prohibition names the Honorable Linda Marquis in the caption, the petition seeks relief from an order decided by the Honorable Lisa M. Brown. Accordingly, we direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

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

Petitioner challenges the district court's denial of his request to modify a temporary spousal support order and the subsequent denial of his motion for reconsideration. The district court has discretion in determining whether to grant a party temporary maintenance. NRS 125.040(1)(a). Additionally, when issuing orders to provide for the temporary maintenance of a party, the court is to consider the financial situation of each of the parties. NRS 125.040(2).

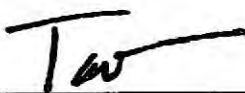
Here, petitioner contends that the district court failed to consider the financial condition of the real party in interest as, he asserts, real party in interest did not actually incur all the expenses she included in her financial disclosure form and she is not entitled to more than her actually incurred costs of living. But the district court is required to consider the financial circumstances of both parties, not only the party receiving support. *See id.* And temporary maintenance awards are appropriate "when the facts, circumstances, and situation of the parties are such that in fairness[, the party receiving the award] should be given financial assistance for [his or] her support during the pendency of the action." *Engbretson v. Engbretson*, 75 Nev. 237, 240, 338 P.2d 75, 76 (1959). Thus, based on our review of the record, we cannot conclude that the district court failed to consider the financial situation of both parties,

such that this court's extraordinary intervention would be warranted. See *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558; *Pan*, 120 Nev. at 228, 88 P.3d at 844.

Petitioner also contends that the district court erroneously denied his motion for reconsideration on the basis that his request improperly sought new relief, unrelated to the underlying motion giving rise to the order he sought reconsideration of. We note here that the district court denied petitioner's new request without prejudice and indicated that petitioner may file a separate motion addressing the new request for relief. Based on these facts, petitioner has a plain and adequate remedy in the form of that motion which precludes writ relief. See NRS 34.170; NRS 34.330; *D.R. Horton*, 123 Nev. at 474-75, 168 P.3d at 736-37. 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.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lisa M. Brown, District Judge, Family Court Division
Nevada Family Law Group
Hofland & Tomsheck
Eighth District Court Clerk