

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAM D. BATTISTONE,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE

JAMES CROCKETT, DISTRICT  
JUDGE,

Respondents,

and

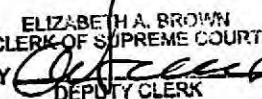
JOHN ROGER BATTISTONE,

Real Party in Interest.

No. 82007-COA

**FILED**

JAN 29 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DENYING PETITION  
FOR WRIT OF MANDAMUS AND/OR PROHIBITION*

This original petition for a writ of mandamus and/or prohibition challenges a post-judgment order in a civil matter.


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. 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. NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107 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, 475, 168 P.3d 731, 737 (2007). Petitioner bears 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).

Here, petitioner Sam Battistone seeks a writ of mandamus and/or prohibition directing the district court to vacate its order denying petitioner's motion to strike real party in interest's supplemental reply, requiring petitioner to turn over certain shares of stock, and requiring the distribution of certain assets held by Eleven Eleven Financial, LLC. Having considered the documents before us, we are not persuaded that this court's intervention by way of extraordinary relief is warranted at this time. *Id.* In particular, it appears that petitioner has a plain, speedy, and adequate remedy in the form of an appeal. *Id.* at 224, 88 P.3d at 841 (explaining that the right to appeal is generally an adequate legal remedy precluding writ relief). Indeed, since filing the instant writ petition, petitioner has availed himself of that remedy by filing an appeal which is currently in briefing before the Nevada Supreme Court in *Battistone v. Battistone*, Docket No. 82021.<sup>1</sup> Accordingly, we decline to exercise our discretion to address the merits of this matter, and we deny the petition. See NRAP 21(b)(1); *D.R. Horton, Inc.*, 123 Nev. at 474-75, 168 P.3d at 736-37.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

<sup>1</sup>Our denial of this petition does not preclude petitioner from filing a new petition for extraordinary writ relief should the circumstances presented here change.

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 24  
Goodsell Law Group  
Beverly Salhanick, Esq., P.C.  
Eighth District Court Clerk