

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MEDICAL DEPOT INC., A/K/A DRIVE
MEDICAL, A/K/A DRIVE DEVILBISS
HEALTHCARE, A FOREIGN
CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,
Respondents,

and

ESTATE OF MARION MOMOYO
YOSHIMOTO, BY AND THROUGH ITS
SPECIAL ADMINISTRATOR
JENNIFER ROSALES; ANN
YOSHIMOTO, AN INDIVIDUAL;
ERNIE YOSHIMOTO, AN
INDIVIDUAL; GLENN YOSHIMOTO,
AN INDIVIDUAL; AND LORRAINE
YOSHIMOTO,
Real Parties in Interest.

No. 82144-COA

FILED

FEB 19 2021

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

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS AND PROHIBITION*

This original petition for a writ of mandamus and prohibition challenges a district court's affirmance and adoption of the discovery commissioner's report and recommendation regarding the production of documents.

Petitioner seeks both a writ of mandamus and a writ of prohibition directing the district court to vacate its order adopting the discovery commissioner's report and recommendation and further limit

discovery in the underlying matter. In particular, the challenged order requires petitioner to respond to real parties in interest's requests for production of documents relating to the product that is at issue in the underlying matter and other products that purportedly have similar designs as the subject product. Petitioner contends that the discovery order, despite limiting real parties interest's requests, remains overbroad and unduly burdensome, and allows for the discovery of irrelevant evidence.

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). A writ of prohibition may be warranted when a district court acts without or in excess of its jurisdiction. NRS 34.320; *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012). 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).

Discovery matters are within the district court's sound discretion and this court will not disturb a district court's discovery ruling absent a clear abuse of discretion. *See Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev., Adv. Op. 26, 467 P.3d 1, 4 (Ct. App. 2020). Thus, although "a writ of mandamus may be issued to compel the district court to vacate or modify a discovery order, extraordinary writs are

generally not available to review discovery orders.” *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 171, 252 P.3d 676, 678 (2011). Accordingly, the appellate courts have typically only issued writs to prevent improper, blanket discovery orders that fail to consider relevancy; discovery orders improperly compelling the disclosure of privileged information; or, sometimes, if an important issue of law needs clarification and public policy would be served by the issuance of a writ. *Okada v. Eighth Judicial Dist. Court*, 131 Nev. 834, 839-40, 359 P.3d 1106, 1110 (2015).

Here, although petitioner asserts that the discovery order at issue will allow the discovery of irrelevant information, petitioner does not assert that the district court failed to consider relevancy; rather, it appears that petitioner simply disagrees with the district court’s conclusion that the discovery sought is relevant. To that end, petitioner has failed to provide any cogent argument demonstrating that the district court abused its discretion in determining the requested information would be relevant, and the potential discovery of irrelevant information in and of itself does not warrant extraordinary relief. *See Valley Health*, 127 Nev. at 171 n.6, 252 P.3d at 679 n.6 (explaining that a writ is not appropriate to address a district court order that would lead to the discovery of irrelevant material). Thus, extraordinary relief is not warranted on this basis. *See Pan*, 120 Nev. at 228, 88 P.3d at 844. We likewise conclude that petitioner has failed to demonstrate extraordinary relief is warranted based solely on the number of discovery requests. *See* NRCP 26(b) (providing that the district court may limit discovery, but not requiring it to do so); *Pan*, 120 Nev. at 228, 88 P.3d at 844.

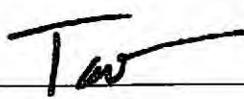
Similarly, to the extent petitioner summarily asserts that the order allows discovery requests that are not proportional to the needs of the

case, petitioner has failed to cite or otherwise discuss the controlling authority on this issue—the *Venetian* case—much less explain how the district court failed to comply with the requirements outlined in that decision. See 136 Nev., Adv. Op. 26, 467 P.3d at 4-7 (explaining that, pursuant to NRCPC 26(b)(1), when considering whether to limit a discovery request the district court must consider whether the evidence sought is relevant and is proportional to the needs of the case).

In light of the forgoing analysis, and because petitioner has not otherwise demonstrated that this case falls within the categories of discovery matters for which extraordinary relief will generally lie, we conclude that our intervention in this matter is not warranted. See *Okada*, 131 Nev. at 839-40, 359 P.3d at 1110; *Pan*, 120 Nev. at 228, 88 P.3d at 844. 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. Mark R. Denton, District Judge
Wiley Petersen
Clear Counsel Law Group
Eighth District Court Clerk