

IN THE SUPREME COURT OF THE STATE OF NEVADA

HYTECH COMPONENTS, INC., A
NEVADA CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SUSAN SCANN, DISTRICT JUDGE,

Respondents,

and

MICHAEL CODY,

Real Party in Interest.

No. 59798

FILED

FEB 17 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
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 order setting aside a summary judgment.

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 or to control an arbitrary or capricious exercise of discretion.” International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); see also NRS 34.160. A writ of prohibition is available when a district court acts without or in excess of its jurisdiction. State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); NRS 34.320. Neither writ is appropriate when the petitioner has a plain, speedy, and adequate remedy at law. International Game Tech., 124 Nev. at 197, 179 P.3d at 558; NRS 34.170; NRS 34.330.

Generally, an appeal is an adequate legal remedy precluding writ relief. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Moreover, “writ relief is not available to correct an untimely notice of appeal.” Id. at 224-25, 88 P.3d at 841.

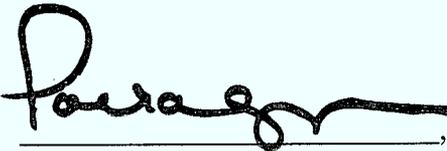
As an initial matter, although the motion for summary judgment was unopposed, the order granting summary judgment was not a default judgment, see NRCP 55 (setting forth the requirements for entry of a default judgment), and thus, the order setting aside the summary judgment was not “an order granting a motion to set aside a default judgment,” excluded from appealability under NRAP 3A(b)(8). Here, because the district court set aside the summary judgment pursuant to NRCP 60(b)(1), based on its conclusion that real party in interest had demonstrated excusable neglect for his failure to respond to the motion for summary judgment, we conclude that the order granting the motion to set aside the judgment was appealable. See NRAP 3A(b)(8) (providing that a special order entered after final judgment is substantively appealable); Dobson v. Dobson, 108 Nev. 346, 349, 830 P.2d 1336, 1338 (1992) (determining that a district court order effectively granting relief from a judgment pursuant to NRCP 60(b) was an appealable order). Accordingly, writ relief is not appropriate in this case, as petitioner had an adequate legal remedy in the form of an appeal, see Pan, 120 Nev. at 224, 88 P.3d at 841 (explaining that an appeal is generally an adequate legal remedy, precluding writ relief). Moreover, to the extent that the time for appealing the district court’s order may have run, writ relief is not a substitute for

an untimely notice of appeal. Id. at 224-25, 88 P.3d at 841. Accordingly, we deny the petition.¹ Id.; NRAP 21(b)(1).

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Susan Scann, District Judge
Kaempfer Crowell Renshaw Gronauer & Fiorentino
Sklar Williams LLP
Eighth District Court Clerk

¹Petitioner's motion for a stay is denied as moot in light of this order.