IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD ALUISI, INDIVIDUALLY; AND COPPERBOOK LAS VEGAS, LLC,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
PORTEX GROUP, LLC; AND SAMSON NAZARYAN, INDIVIDUALLY,
Real Parties in Interest.

No. 84423-COA

FILED

NOV 23 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

Donald Aluisi and Copperbook Las Vegas, LLC's (collectively referred to as petitioners) original petition for a writ of mandamus challenges a district court order granting, in part, a motion in limine to preclude them from presenting any special damages related to certain claims because they failed to timely provide a computation of special damages as required under NRCP 16.1.[1] Based on our review of the limited record before us, the district court's order does not preclude petitioners from

[1]We note that the computation of damages requirement, now set forth in NRCP 16.1(a)(1)(A)(iv), which is substantially similar to the prior rule, continues to apply to special damages and not to general or intangible damages. *See* 2004 drafter's note to NRCP 16.1(a)(1)(C) (2005 amendment).

pursuing general or intangible damages at trial as well as special damages related to diminution of property value.[2]

A writ of mandamus is an extraordinary remedy that seeks to compel the performance of an act that the law requires or to control an "arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Whether to consider a writ petition is within this court's complete discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). The petitioner bears the burden of demonstrating that such relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Moreover, writs are only available when the petitioner does not have a "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330.

Based on the foregoing, we conclude petitioners have not demonstrated that our extraordinary and discretionary intervention is warranted. *Pan*, 120 Nev. at 228, 88 P.3d at 844. This court will review the "district court's decision to admit or exclude evidence for abuse of discretion." *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008). "[D]iscovery matters are within the district court's sound discretion, and we will not disturb a district court's ruling regarding discovery unless the court has clearly abused its discretion." *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 224, 467 P.3d 1, 4 (Ct. App. 2020). The district court may exercise its discretion to exclude information not timely disclosed or

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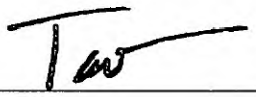
[2]We also note that the *post-verdict* attorney fees may be available to either party by rule or statute. We do not interpret the district court's order to suggest otherwise.

supplemented pursuant to NRCP 37(c)(1) (providing that a party is prohibited from using as evidence at trial any information not disclosed unless the party can show there was substantial justification for the failure to disclose or the failure was harmless). Here, the district court determined that the failure to disclose special damages, except for the diminution of value, was not justified or harmless. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) ("The district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence."); *see also Bahena I v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 254, 235 P.3d 592, 599-600 (2010) ("[N]on-case concluding sanctions do not have to be preceded by other less severe sanctions."). Accordingly, we deny the petition. *See Smith*, 107 Nev. at 677, 818 P.2d at 851.

It is so ORDERED.



_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. Jerry A. Wiese, Chief Judge
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP/Las Vegas
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP/Fresno
Kaempfer Crowell/Las Vegas
Hall Jaffe & Clayton, LLP
Eighth District Court Clerk