

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW RULON HARPER,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE LISA
BROWN, DISTRICT JUDGE, FAMILY
COURT DIVISION,
Respondents,
and
WENDY OPAL HARPER,
Real Party in Interest.

No. 42878

FILED

MAR 12 2004

JANETTE A. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF PROHIBITION, MANDAMUS, OR CERTIORARI

This original petition for a writ of prohibition, mandamus, or certiorari challenges a district court's oral ruling that denied petitioner's motion to modify the child custody arrangement. Petitioner also requests that this court issue a writ directing the district court to vacate an April 7, 2004 hearing to address real party in interest's countermotion to relocate with the children to Utah and for child support arrearages.

We have considered this petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time.¹ In particular, the district court has apparently not entered a written order denying petitioner's motion to modify custody.² We have

¹See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

²See Rust v. Clark Cty. School District, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (observing that a "district court's oral pronouncement
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previously recognized that “[p]rior to the entry of a final judgment the district court remains free to reconsider and issue a written judgment different from its oral pronouncement.”³ Further, a formal, written post-divorce order is appealable as a special order made after final judgment if it affects the rights of the parties growing out of the final judgment.⁴ This court has made an exception for appeals from orders denying motions to amend divorce decrees “where the motion is based upon changed factual or legal circumstances and the moving party is not attacking the original judgment.”⁵ These orders are appealable as “special order[s] made after final judgment.”⁶

In the present matter, should the district court enter a written order that denies petitioner’s motion to modify child custody, petitioner may appeal from the order.⁷ In addition, if, after the April hearing the

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from the bench” is “ineffective for any purpose”); accord Tiedman v. Tiedman, 255 N.W.2d 632, 634 (Mich. 1977) (stating that it is “well established that courts speak through their judgments and decrees, not their oral statements”).

³Rust, 103 Nev. at 688, 747 P.2d at 1382.

⁴See Wilkinson v. Wilkinson, 73 Nev. 143, 311 P.2d 735 (1957); NRAP 3A(b)(2); see also Gumm v. Mainor, 118 Nev. ___, 59 P.3d 1220 (2002) (clarifying that a special order made after final judgment must affect the rights of some party to the action, growing out of the previous judgment).

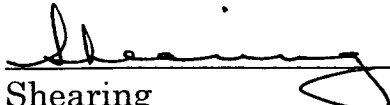
⁵Burton v. Burton, 99 Nev. 698, 700, 669 P.2d 703, 705 (1983).


⁶Id.; see NRAP 3A(b)(2).


⁷See NRAP 3(a) (providing that an appeal may be taken by filing a notice of appeal in the district court within the time provided by NRAP 4).

district court enters a written order granting real party in interest's petition to relocate with the children to Utah, petitioner may appeal from that order. Thus, it appears that petitioner will have an adequate legal remedy in the form of an appeal from any adverse written orders.⁸ Accordingly, we deny the petition.⁹

It is so ORDERED.

 _____, C.J.
Shearing

 _____, J.
Becker

 _____, J.
Gibbons

cc: Hon. Lisa Brown, District Judge, Family Court Division
Law Offices of Bradley J. Hofland
Law Office of Marshal S. Willick, PC
Clark County Clerk

⁸See Guerin v. Guerin, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998), abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000) (recognizing that an appeal is an adequate legal remedy); NRS 34.020 (providing that a writ of certiorari may issue only if there is no appeal or other adequate remedy); NRS 34.170 (stating that a writ of mandamus may only issue if there is no other adequate and speedy legal remedy); NRS 34.330 (indicating that a writ of prohibition may only issue if there is no adequate and speedy legal remedy).

⁹See NRAP 21(b).