

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN J. M.,
Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR CARSON CITY, AND THE
HONORABLE MICHAEL R. GRIFFIN,
DISTRICT JUDGE,

Respondents,

and

ASHLI A. AND M. A., THROUGH HER
PROPOSED GUARDIAN AD LITEM,

ASHLI A.,

Real Parties in Interest.

No. 43392

FILED

JUN 28 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF 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 that denied petitioner's motion for temporary visitation with the parties' minor child.

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,¹ or to control an arbitrary or capricious exercise of discretion.² On the other hand, a writ of prohibition is the proper remedy to restrain a district court from exercising a judicial function without or in excess of its jurisdiction.³ In either case, the writ may be issued only where "there is

¹NRS 34.160.


²Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

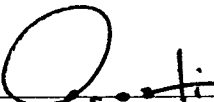
³NRS 34.320; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).


not a plain, speedy and adequate remedy in the ordinary course of law."⁴
The issuance of either writ "is purely discretionary" with this court.⁵

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. In particular, it appears that petitioner has an adequate legal remedy in the form of an appeal from an order establishing child custody.⁶ Once the district court enters a written order establishing custody, petitioner may appeal if he is aggrieved.⁷ Accordingly, we deny the petition.⁸

It is so ORDERED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁴NRS 34.170; NRS 34.330; see also Guerin v. Guerin, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998) (recognizing that an appeal is an adequate legal remedy) abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

⁵Smith, 107 Nev. at 677, 818 P.2d at 851.

⁶NRAP 3A(b)(2)

⁷See NRAP 3A(a); NRAP 4(a)(1).

⁸See NRAP 21(b).

cc: Hon. Michael R. Griffin, District Judge
Woodburn & Wedge
Allison W. Joffe
Carson City Clerk