

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE E. SCHWIGER,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
STEVEN E. JONES, DISTRICT JUDGE,
FAMILY COURT DIVISION,

Respondents,

and

LISA N. SCHWIGER,
Real Party in Interest.

No. 43734

FILED

APR 06 2005

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

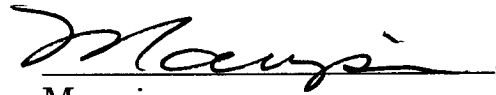
This is an original proper person petition for a writ of mandamus requesting this court to compel the district court to enter a written order in a child custody matter so that petitioner can seek appellate review in this court. On November 30, 2004, we directed an answer. Although we have not receive an answer, on February 10, 2005, a certified copy of a district court order, which was entered on January 4, 2005, and resolves the underlying custody matter, was filed in this court. Thereafter, petitioner filed a notice of appeal from the January order, which was docketed as No. 44673, and which is currently pending before this court.

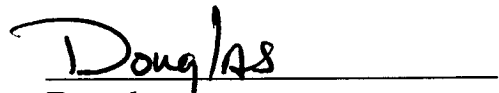
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or

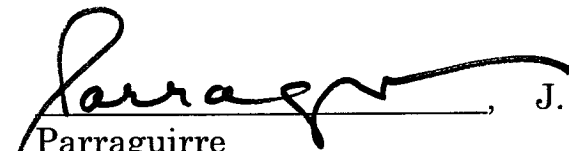
station,¹ or to control an arbitrary or capricious exercise of discretion.² A writ may be issued only when "there is not a plain, speedy and adequate remedy in the ordinary course of law."³ We have consistently determined that an appeal is an adequate legal remedy that will preclude writ relief.⁴

Since petitioner has an adequate legal remedy in the form of an appeal from the January 2005 order concerning child custody,⁵ we are not satisfied that this court's intervention by way of extraordinary relief is warranted. Accordingly, we deny the petition.⁶

It is so ORDERED.⁷

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

¹NRS 34.160.

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

³NRS 34.170.

⁴See Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004).

⁵NRAP 3A(b)(2).

⁶See NRAP 21(b).

⁷In light of this order, we deny as moot appellant's August 6, 2004 proper person motion for leave to file papers, motions and briefs.

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Lawrence E. Schwiger
Lisa N. Schwiger
Clark County Clerk