

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK MCCORMACK,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE N. ANTHONY DEL
VECCHIO, DISTRICT JUDGE,
FAMILY COURT DIVISION,
Respondents,
and
GLORIA MCCORMACK,
Real Party in Interest.

No. 45206

FILED

JUL 06 2005

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

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS AND/OR PROHIBITION

This is an original petition for a writ of mandamus and/or prohibition challenging a district court's ruling regarding child custody.

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

¹NRS 34.160.

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

district court from exercising a judicial function without or in excess of its jurisdiction.³ In either case, the writs may be issued only when "there is 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, the documents before this court show that an evidentiary hearing on child custody issues is scheduled for July 18, 2005. If petitioner is ultimately aggrieved by the district court's final custody determination, he can appeal.⁶ The right to appeal is generally an

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

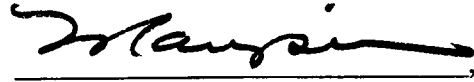
⁴NRS 34.170; NRS 34.330; see also Pan v. District Ct., 120 Nev. 222, 88 P.3d 840 (2004) (recognizing that an appeal is an adequate legal remedy).

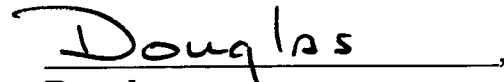
⁵Smith, 107 Nev. at 677, 818 P.2d at 851.

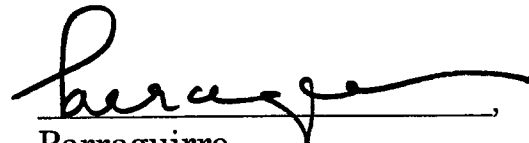
⁶See NRAP 3A(b)(2) (permitting an appeal from an order finally establishing or altering child custody); Burton v. Burton, 99 Nev. 698, 669 P.2d 703 (1983) (recognizing that an order denying a motion to modify a family court order, based on changed factual or legal circumstances, is appealable as a special order after final judgment); see also State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004) ("[D]ispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy, must be written, signed, and filed before they become effective.").

adequate remedy that precludes writ relief.⁷ Accordingly, we deny the petition.⁸

It is so ORDERED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Kunin & Jones
Hofland Manning
Clark County Clerk

⁷See Pan, 120 Nev. 222, 88 P.3d 840.

⁸See NRAP 21(b).