

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK GARY,
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

IRINA GAVEY,
Real Party in Interest.

No. 45448

FILED

JUL 06 2005

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

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

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

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.¹ The writ may be issued only when "there is not a plain, speedy and adequate remedy in the ordinary course of law."² The issuance of a writ "is purely discretionary" with this court.³

We have considered this petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this


¹NRS 34.320; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

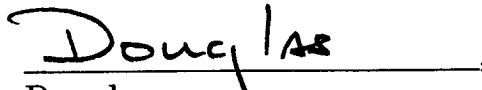
²NRS 34.330; see also Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004) (recognizing that an appeal is an adequate legal remedy).

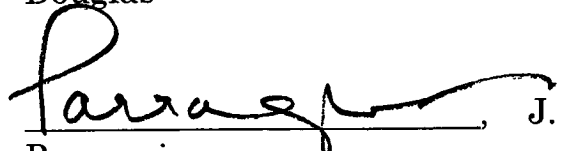
³Smith, 107 Nev. at 677, 818 P.2d at 851.

time. In particular, the documents before this court show that an evidentiary hearing on child custody issues is scheduled for July 26, 2005. If petitioner is ultimately aggrieved by the district court's final custody determination, he can appeal.⁴ The right to appeal is generally an adequate remedy that precludes writ relief.⁵ Accordingly, we deny the petition.⁶

It is so ORDERED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

⁴See 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.”).

⁵See Pan, 120 Nev. 222, 88 P.3d 840

⁶See NRAP 21(b).

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Berkley, Gordon & Goldstein, LLP
Frances-Ann Fine
Clark County Clerk