

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY DISTRICT  
ATTORNEY, JUVENILE DIVISION,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
GERALD W. HARDCASTLE, DISTRICT  
JUDGE, FAMILY COURT DIVISION,  
Respondents.

No. 47745

**FILED**

FEB 25 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR  
PROHIBITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order finding that the Department of Family Services (DFS) failed to make reasonable efforts to achieve permanency for D.K., a minor child.

D.K. was placed in protective custody at the time of his birth on December 30, 1998, due to his mother's drug use during pregnancy. D.K. was declared a ward of the state and placed in DFS custody on June 27, 2002. D.K. was placed in the custody of his paternal grandparents in Pennsylvania on March 12, 2003. Subsequently, on April 1, 2004, both parents voluntarily terminated their parental rights in an effort to assist DK's paternal grandparents in their effort to adopt DK. DFS operated under Pennsylvania law to facilitate DK's adoption. DK's grandparents substantially complied with both Pennsylvania and Nevada state law during the procedure and were approved by both states to adopt DK. However, DK's grandmother died suddenly and a new adoption plan based



on the grandfather's single status had to be made. Even while admitting that the grandmother's death was out of DFS' control, the district court found that DFS had taken too long in finalizing the adoption and entered a finding of unreasonable efforts.

Petitioner Clark County District Attorney, Juvenile Division, raised two issues in its petition: (1) a writ of mandamus or prohibition are the only available remedies; and (2) the district court abused its discretion when it failed to consider mandated factors set forth in NRS 432B.393(5) in making its finding that DFS failed to make reasonable efforts to achieve permanency for DK.

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' or to control an arbitrary or capricious exercise of discretion."<sup>1</sup> Writs of prohibition are "the counterpart of the writ of mandate. [They] arrest [] the proceedings of any . . . board or person exercising judicial functions, when such proceedings are without or in excess of the[ir] jurisdiction . . . ."<sup>2</sup> Such writs may be issued when no plain, speedy and adequate remedy exists in the ordinary course of law.<sup>3</sup> This court has consistently held that writs are "an extraordinary remedy."<sup>4</sup>

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<sup>1</sup>Cheung v. Dist. Ct., 121 Nev. 867, 868-69, 124 P.3d 550, 552 (2005)(quoting NRS 31.160).

<sup>2</sup>NRS 34.320.

<sup>3</sup>NRS 34.020; NRS 34.170; NRS 34.330.

<sup>4</sup>Cheung, 121 Nev. at 869, 124 P.3d at 552.

Respondents contend that the Clark County District Attorney lacks standing to bring this petition. We agree.

In order to seek a writ for extraordinary relief in this court, the petitioner must have standing.<sup>5</sup> To establish standing, the petitioner must demonstrate a “beneficial interest” in obtaining writ relief.<sup>6</sup> We must deny the writ if “the petitioner will gain no direct benefit from its issuance and suffer no direct detriment if it is denied.”<sup>7</sup> Here, the Clark County District Attorney has no ascertainable beneficial interest in having the district court’s order reversed, nor will it suffer a direct detriment if the writ is denied.

The Clark County District Attorney does not have a beneficial interest because the obligation of making reasonable efforts findings lies with the District Court and derives from the Federal Adoption and Safe Families Act of 1997 (the Act).<sup>8</sup> The Act, in part, provides reimbursements to States for a portion of child care placement costs during the time that a state agency is seeking permanent placement.<sup>9</sup> The State may then allocate funds to state agencies for administration of the funds.<sup>10</sup> The Act

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<sup>5</sup>Secretary of State v. Nevada State Legislature, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004) (recognizing that “[s]tanding is the legal right to set judicial machinery in motion” (citation omitted)).

<sup>6</sup>Id. at 461, 93 P.3d at 749.

<sup>7</sup>Id.

<sup>8</sup>42 U.S.C.A. § 678.

<sup>9</sup>Id. at §§ 671-72.

<sup>10</sup>Id. at §§ 671, 674.

requires that States receiving federal foster care funds for placements demonstrate that the State is making reasonable efforts to prevent removal of children from their families, to reunify families where there has been removal, and to finalize the permanent placement of a child where the child cannot be returned home.<sup>11</sup> If the agency does not make reasonable efforts to place a child, the Act allows the federal government to withhold reimbursement during the time the agency is not making reasonable efforts.<sup>12</sup>

NRS 432.031 designates DFS, as an agent of the Department of Health and Human Services (DHHS) to act as “the single state agency of the State of Nevada and its political subdivisions in the administration of any federal money granted to the State to aid in the furtherance of any services and activities for child welfare.” Further, “[t]he Division (DFS) may adopt such standards as are required by the Congress of the United States as a condition to the acceptance of [any increase in benefits] . . . .”<sup>13</sup> Finally, “[a]n agency which provides child welfare services in a county whose population is 100,000 or more shall enter into such agreements with the Division as are necessary to maximize the amount of money that this State may obtain from the Federal Government for the provision of child welfare services throughout this State.”<sup>14</sup> NAC 432B.060 further states that “[a]n agency which provides child welfare services shall

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<sup>11</sup>Id. §§ 671 et seq.

<sup>12</sup>Id.

<sup>13</sup>NRS 432.031.

<sup>14</sup>Id.

cooperate with the division in such a manner as necessary for the state to obtain federal money for services and activities relating to child welfare.”

In keeping with the federal act, the Nevada Legislature enacted NRS 432B.393(5) in an effort to define reasonable efforts put forth by county departments of children and family services.<sup>15</sup> The funding stream from the federal government provides a beneficial interest to the State of Nevada, the loss of which could, in turn, cause a detriment to DFS, not to the Clark County District Attorney. Thus, the District Attorney is not directly impacted by the federal government’s withholding of funds. Here, the Clark County District Attorney merely sought to represent DFS, and since it does not have a beneficial interest in having DFS reimbursed by the federal government, it therefore lacks standing to seek extraordinary relief.

It is clear that federal funds received under the Act are to be allocated directly to DFS to administer child welfare services. No statute, regulation or rule affords any District Attorney authority to administer funds received for child welfare under the Act.

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<sup>15</sup>NRS 432B.393(5).

Having considered the petition, answer and argument, we conclude that the Clark County District Attorney lacks standing to bring a writ of mandamus or prohibition and we deny it.

It is so ORDERED.

Gibbons, C.J.  
Gibbons

Maupin, J.  
Maupin

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

Cherry, J.  
Cherry

Saitta, J.  
Saitta

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division  
Clark County District Attorney David J. Roger/Juvenile Division  
Attorney General Catherine Cortez Masto/Carson City  
Attorney General Catherine Cortez Masto/Las Vegas  
Eighth District Court Clerk