

IN THE SUPREME COURT OF THE STATE OF NEVADA

PRESTELLA DENSMORE,
Petitioner,

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,

and

VICTOR DENSMORE,
Real Party in Interest.

No. 48026

FILED

SEP 14 2006

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

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges district court orders granting real party in interest visitation with his siblings and scheduling a contempt hearing.

On December 23, 2005, the district court entered an order that granted the real party in interest permission to have telephone communications and weekly visitation for one hour with his four siblings.¹ On August 17, 2006, real party in interest moved the district court for an order to show cause why petitioner should not be held in contempt for not complying with the visitation order. Petitioner opposed the motion. A

¹Petitioner states that she is challenging an October 3, 2005 order and a February 28, 2006 order; however, the documents before this court do not contain orders from the district court filed on these dates.

hearing regarding contempt is schedule on September 15, 2006. Petitioner has filed an emergency motion to stay the hearing.

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 station² or to control an arbitrary or capricious exercise of discretion.³ A writ of prohibition arrests the proceedings of any tribunal exercising judicial functions, when such proceedings are without or in excess of its jurisdiction.⁴ Further, mandamus and prohibition are extraordinary remedies, and it is within the discretion of this court to determine if a petition will be considered.⁵

We have reviewed the petition and accompanying documents, and we conclude that our intervention by way of extraordinary relief is not warranted. In particular, since the contempt hearing has not been held, it is not known whether the district court will find petitioner in contempt. Moreover, petitioner may challenge, during the hearing, whether the visitation order is enforceable. Ultimately, if the district court finds petitioner in contempt, she may then challenge that finding through a writ

²NRS 34.160.

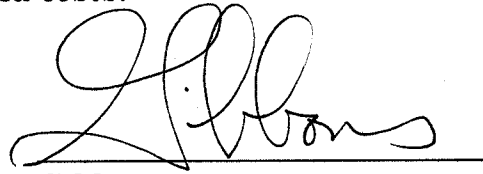
³See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

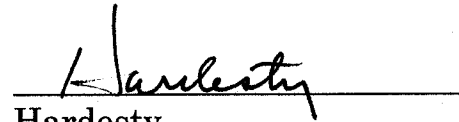
⁴NRS 34.320.

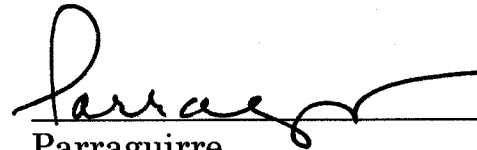
⁵See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

petition.⁶ Accordingly, we deny this petition. Additionally, we deny petitioner's request for attorney fees and costs.

It is so ORDERED.⁷


_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Gayle F. Nathan
Clark County Legal Services Program, Inc.
Clark County Clerk

⁶See Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000) (stating that the proper mode of review of a contempt order is by extraordinary writ).

⁷In light of this order, we deny as moot, petitioner's September 11, 2006 emergency motion for stay.