

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER DIAZ,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
STEFANY ANN MILEY, DISTRICT  
JUDGE, FAMILY COURT DIVISION,

Respondents,

and

DANYEL DIAZ,  
Real Party in Interest.

No. 49274

**FILED**

MAY 14 2007

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

ORDER DENYING PETITION  
FOR WRIT OF PROHIBITION OR MANDAMUS

This is an original petition for a writ of prohibition or mandamus challenging a district court order setting aside portions of a divorce decree.

Whether to consider a petition for the extraordinary remedy of writ relief is within this court's sound discretion.<sup>1</sup> This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the

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<sup>1</sup>State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146, 42 P.3d 233, 237 (2002).

jurisdiction of the district court.<sup>2</sup> A writ of mandamus is available to compel the performance of an act, which the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion.<sup>3</sup> Neither writ will issue, however, when the petitioner has a plain, speedy and adequate remedy in the ordinary course of law.<sup>4</sup>

We have considered this petition, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted.<sup>5</sup> In particular, the documents before this court show that the district court conducted a hearing on April 9, 2007, to address child custody issues. Once the district court enters an order resolving the custody issues, petitioner may appeal if he is aggrieved by the district court's

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<sup>2</sup>NRS 34.320.

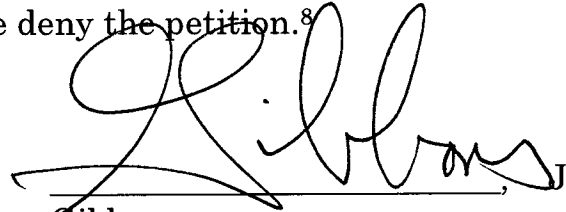
<sup>3</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

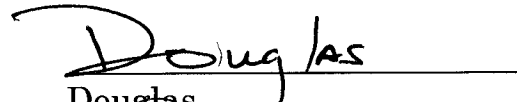
<sup>4</sup>Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004); NRS 34.170; NRS 34.330.

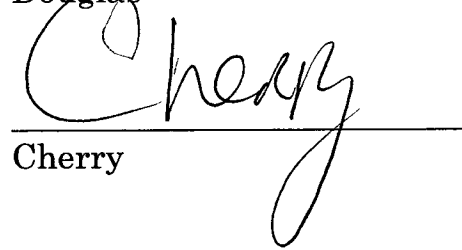
<sup>5</sup>Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

determination.<sup>6</sup> The right to appeal is generally an adequate remedy that precludes writ relief.<sup>7</sup> Accordingly, we deny the petition.<sup>8</sup>

It is so ORDERED.

  
Gibbons J.

  
Douglas J.

  
Cherry J.

cc: Hon. Stefany Miley, District Judge, Family Court Division  
Ryan & Ciciliano, LLC  
Hanratty Roberts Law Group  
Eighth District Court Clerk

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<sup>6</sup>See NRAP 3A(a); NRAP 3A(b)(2) (permitting an appeal from an order finally establishing or altering child custody).

<sup>7</sup>See Pan, 120 Nev. 222, 88 P.3d 840.

<sup>8</sup>See NRAP 21(b).