

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA KINSEY,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
CYNTHIA DIANNE STEEL, DISTRICT
JUDGE, FAMILY COURT DIVISION,
Respondents,

and

ROBERT JAMES AND PENNY JAMES,
Real Parties in Interest.

No. 50528

FILED

APR 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges the district court's oral refusal to rule on petitioner's NRCP 60(a) motion to correct an order summarily affirming and adopting a guardianship commissioner's report and recommendation concerning the guardianship of petitioner's child. Petitioner seeks a writ of mandamus compelling the district court to grant her motion and amend the guardianship order to reflect that petitioner objected to the commissioner's report and recommendation and allow her to have a subsequent hearing on the matter. As requested, real parties in interest Robert and Penny James have filed an answer.

A writ of mandamus is appropriate 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 a manifest abuse of discretion.² Mandamus is an extraordinary remedy, and it is within this court's discretion to determine if a petition will be considered.³ Mandamus relief generally is unavailable when there is an adequate legal remedy, such as an appeal from a final judgment.⁴ An untimely notice of appeal may not be corrected by writ relief.⁵ Lisa Kinsey, as the petitioner, bears the burden of demonstrating that extraordinary relief is warranted.⁶

Upon consideration of the petition, the answer to the petition, and the supporting documents, we conclude that our extraordinary intervention is not warranted.⁷ Accordingly, we

¹See NRS 34.160.

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

³Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁴NRS 34.170; Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

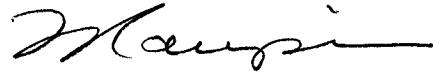
⁵Pan, 120 Nev. at 224-25, 88 P.3d at 841.

⁶Id. at 228, 88 P.3d at 844.

⁷See Hudson v. Jones, 122 Nev. 708, 138 P.3d 429 (2006) (describing the procedure for modifying custody or guardianship); see also Ellis v. Carucci, 123 Nev. __, 161 P.3d 239 (2007) (changing the governing standard for the modification of primary physical custody).

Although Kinsey argues that she must now meet a higher legal standard to terminate the guardianship, Kinsey is not challenging the district court's guardianship order, which would not be appropriate for consideration in the context of a writ petition since Kinsey had a right to appeal from the district court's guardianship order but declined to do so. See NRS 159.325; Pan, 120 Nev. at 224-25, 88 P.3d at 841.

ORDER the petition DENIED.⁸



J.

Maupin



J.

Cherry



J.

Saitta

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Nevada Legal Services/Las Vegas
John C. Wawerna
Eighth District Court Clerk

⁸While Kinsey argues that the district court has improperly failed to rule on her NRCP 60(a) motion, we construe the effect of the district court's refusal to rule on the motion as a denial of the motion. See Weiler v. Ross, 80 Nev. 380, 382, 395 P.2d 323, 323 (1964) (noting that the effect of a district court's refusal to rule upon a motion was to deny the motion). See also Bd. of Gallery of History, Inc. v. Datecs Corp., 116 Nev. 286, 289 994 P.2d 1149, 1150 (2000).