

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALORIE JONES; SCOTT HARTZE;
AND STACIE HARTZE,
Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
DEBORAH SCHUMACHER, DISTRICT
JUDGE,
Respondents,
and
WASHOE COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Real Party in Interest.

No. 52204

FILED

NOV 14 2008

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Anger*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order placing petitioner Valorie Jones's minor child in the care of the child's paternal relatives in Texas.

The minor child was placed into the custody of real party in interest, the Washoe County Department of Social Services (WCDSS) immediately following her birth in May 2007. Since that time, the child has resided in foster care in the Reno, Nevada area, with petitioners Scott and Stacie Hartze. The child has a sibling, who is also in foster care with another family in Reno. In June 2007, the child's father was located but, after paternity was confirmed, he disappeared. In February 2008, Jones failed to appear at a permanency hearing, and the court adopted a permanency plan aimed at the termination of parental rights, to be followed by adoption. The child remained in foster care with the Hartzes.

Also in February 2008, WCDSS located the child's paternal grandmother in Texas. From that contact, WCDSS located the child's paternal aunt and uncle, who also live in Texas, and who expressed interest in adopting the child upon learning that she was in protective custody. An Interstate Compact for the Placement of the Child (ICPC), to which Jones objected, was initiated and approved for the paternal aunt and uncle. In May 2008, a hearing was held before a special master, at which Jones, who was represented by counsel, the Hartzes, and the paternal aunt and uncle were present.

Following the hearing, the master found that the child had bonded with her foster parents. The master further found that, although the foster parents testified that they had considered adopting the child's sibling, they had not advised WCDSS that they were considering that option before the hearing. According to the master's findings, from WCDSS's perspective, placement with the relatives was in the child's best interest because (1), in its experience, adoption had a greater chance of success when a child is placed with family, and (2) the child had an extended family network in Texas. The master recognized, however, that Jones had expressed her wish that the child remain with the foster parents because they were willing to have an open adoption, the child would remain closer to Jones and to the child's sibling, and the child had bonded with the foster family. The master also noted that the child's biological father had a contrary wish, which was for the child to be placed with his relatives.

In entering a recommendation that the child be placed with the paternal relatives, the master found that the presumption that it is in the children's best interest to place siblings together in the same home did

not control because the two children never had been placed together and the permanency plan was for the children to be adopted by different families. Noting that the Hartzes and the paternal relatives both were suitable placements, that the child had bonded with the foster family, and that the child had visitation with her sibling while she was in the Hartze's care, the master nevertheless recommended placing the child with the paternal relatives, concluding that preservation of the family relationship was an important consideration in determining the child's best interest. According to the master, nothing indicated that the child would be unable to bond with her paternal relatives and extended family, and considering the child's long-term best interests, placement with the paternal relatives was recommended.

After Jones timely objected to the recommendation, the district court held a hearing, as required under Second District Court Rule 32(1)(b), at which oral argument was presented. After reviewing the record and considering the parties' arguments, the district court adopted the Master's recommendation. This petition for mandamus relief followed, along with a request for a stay of the child's transfer. After granting petitioners' request for a temporary stay, this court entered an order directing WCDSS to file an answer and extending the stay pending consideration of the petition and answer. WCDSS has timely filed an answer, as directed.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.¹

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

Mandamus is an extraordinary remedy, however, and whether a petition for such relief will be considered is within our sole discretion.² Petitioners bear the burden to demonstrate that our intervention by way of extraordinary relief is warranted.³

Here, petitioners argue that the paternal relatives did not timely seek to have the child placed with them, but the documents submitted to this court do not support that assertion. To the contrary, the master specifically found that, upon being notified of the child's placement in protective custody, the paternal relatives immediately notified WCDSS of their desire that the child be placed with them, ultimately for adoption, and they took immediate steps to initiate the ICPC process.⁴

Petitioners also assert that the child's best interest would not be served by placing her with the paternal relatives. The master, however, made specific findings that, although the child had bonded with her foster family, she had an extensive family network in Texas and nothing indicated that she would not also bond with her paternal relatives. The master, in making a recommendation, considered the child's best interest and NRS 432B.550(5), under which, when the child is placed with a nonparent, (a) it is presumed that placing the child with a sibling is in the child's best interest, and (b) preference must be given to

²See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

³Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁴See NRS 432B.550(5)(b) (requiring that placement with a relative be pursued within the one year after the child's initial placement outside of the home).

placing the child with relatives, even if the relatives live outside of Nevada.⁵ By adopting the master's recommendation, the district court recognized the sibling presumption but, as expressed in the master's findings, determined that it was not prevailing here because the child and the sibling had never been placed together and the plan never included that they would be placed together due to the sibling's extensive special needs, which were being met in his present foster home and potential adoptive placement. Noting that both the foster family and the paternal relatives were suitable placements for the child, the district court also appropriately considered the familial preference under NRS 432B.550(5).⁶


While petitioners argue that the district court failed to give adequate consideration to Jones's wish to have the child placed with the Hartzes, the district court considered Jones's wishes, but it also considered the wishes of the paternal father, whose parental rights likewise have not been terminated, along with the preference favoring placement with relatives. According to WCDSS, Jones, at the November 2007 dependency hearing, indicated that she wished to work toward reunification, but when Jones later failed to appear at the February 2008 permanency hearing, a plan for termination of parental rights to be followed by adoption was approved. And although an open adoption with the Hartzes would have been appropriate for discussion at that time, Jones did not appear and, by that time, the paternal relatives had been contacted.

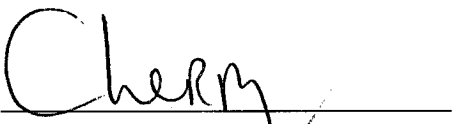
⁵NRS 432B.550(5).

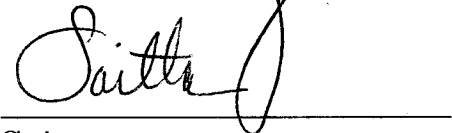
⁶See Clark County Dist. Att'y v. Dist. Ct., 123 Nev. ___, 167 P.3d 922 (2007)

Finally, petitioners assert that certain testimony and information not presented at the hearing before the special master resulted in a less than fully-informed decision, but Jones appeared at the hearing, represented by counsel, and she was allowed to testify and present evidence. Moreover, the master permitted the parties to file supplemental points and authorities after the hearing if they wished, but it appears that no such supplement was filed. Accordingly, because petitioners have not demonstrated that our extraordinary intervention is warranted here, we

ORDER the petition DENIED.⁷


_____, C.J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Deborah Schumacher, District Judge, Family Court Division
Paul M. Gaudet
Washoe County District Attorney Richard A. Gammick /Civil
Division
Washoe District Court Clerk

⁷In light of this order, we vacate the stay imposed by our August 8, 2008, order.