

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO: T.A.A., A MINOR.

No. 55339

LASHANNA C.,
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
THE STATE OF NEVADA,
Real Party in Interest.

FILED

JUN 11 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY M. MOY
DEPUTY CLERK

ORDER GRANTING WRIT OF MANDAMUS

This is an original petition for a writ of mandamus or prohibition in a case involving child custody and termination of parental rights.

Petitioner seeks a writ of mandamus or prohibition directing the district court to stay a scheduled termination of parental rights hearing until after the district court holds a hearing on petitioner's objections to the hearing master's recommendations in a related placement case. Respondent Judge Steel was granted permission to file a response, and she has done so. Real party in interest has also filed an answer, as directed by this court.

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. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637

P.2d 534 (1981). A writ of prohibition arrests the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. NRS 34.320. A writ of mandamus or prohibition “shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170.

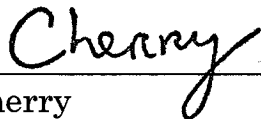
Respondent and real party in interest argue that petitioner lacked standing to raise the placement issue before the hearing master or to object to the hearing master’s recommendations. In support of this argument, they cite a California case in which a father was found not to have standing to appeal because he had stipulated to a termination of reunification efforts and had no other interest in the outcome of the case. Cesar V. v. Superior Court, 111 Cal. Rptr. 2d 243 (Ct. App. 2001). Here, the biological mother’s parental rights have not yet been terminated, and she has an interest in the outcome of the placement case because she will voluntarily terminate her parental rights if the child is placed with the paternal aunt. Thus, the natural mother had standing to raise the placement issue and to object to the hearing master’s recommendation.

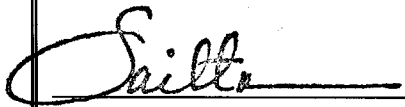
Respondent also argues that she did not abuse her discretion to decide how to manage the two cases in reference to each other because the placement hearing may be held after the termination of parental rights hearing and the child’s permanency plans should not be delayed. However, the permanency plan will not be put into place until both the placement and the termination of parental rights issues are determined. If the placement hearing is held first, the outcome of the hearing may be such that the termination of parental rights hearing will be unnecessary because the natural mother has agreed to stipulate to a termination of parental rights if the child is placed with her aunt. Contrarily, if the

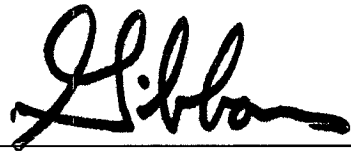
termination of parental rights hearing is held first, the placement hearing will have to follow regardless of the outcome of the termination hearing. Thus, respondent abused her discretion and a writ of mandamus is appropriate because judicial economy is best served by holding the placement hearing first, and respondent has not identified any reason for her decision not to do so. See Tighe v. Von Goerken, 108 Nev. 440, 442-43, 833 P.2d 1135, 1136-37 (1992) (holding that the essence of an arbitrary and capricious action is generally found in the “apparent absence of any grounds or reasons for the decision”) (internal quotation marks omitted).

Because the district court’s refusal to continue the termination hearing was a manifest abuse of discretion, for which petitioner has no plain, speedy, or adequate remedy at law, we grant the petition and direct the clerk of this court to issue a writ of mandamus directing the district court to continue the termination of parental rights hearing until the placement issue is resolved. NRS 34.160; NRS 34.170.¹

It is so ORDERED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹We are mindful of the district court’s discretion to manage its docket, as well as the court’s need to do so efficiently, and we do not intend to micromanage the district court’s handling of its docket. Nevertheless, out of concern for the protection of the rights of all the parties involved, we feel that it is necessary to grant the writ in this case.

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Special Public Defender
Attorney General/Las Vegas
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk