

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, HEALTH AND
HUMAN SERVICES DEPARTMENT,
DIVISION OF CHILD AND FAMILY
SERVICES,
Petitioner,


vs.

THE FOURTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF ELKO,
AND, THE HONORABLE ANDREW J.
PUCCINELLI, DISTRICT JUDGE,
Respondents,
and
CAMERON T.,
Real Party in Interest.

No. 55859

FILED

APR 26 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING WRIT RELIEF

Petitioner has filed a petition for a writ of prohibition to prevent the district court from ordering that real party in interest's minor child be returned to him prior to a de novo hearing scheduled in the district court for May 5, 2010. Petitioner also seeks a stay of the district court's earlier order requiring the child to be returned to real party in interest.¹

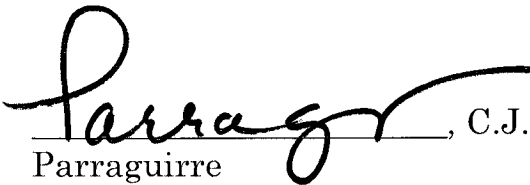
Because the State has not asserted that the district court has acted or will act outside its jurisdiction, but rather that the court has manifestly abused its discretion, we construe the petition as one for

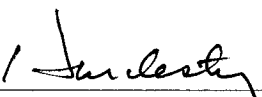
¹Petitioner attached an affidavit to its motion for a stay, but has still failed to file an affidavit in support of the writ petition, as required by NRS 34.170, and as mentioned in our prior order.

mandamus, rather than prohibition. See City of Sparks v. District Court, 112 Nev. 952, 953 n.1, 920 P.2d 1014, 1015 n.1 (1996) (construing a petition for a writ of prohibition as one for mandamus where mandamus was the appropriate remedy). A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

Having considered this petition and the attached documents, we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. Accordingly, we deny the petition. See NRAP 21(b)(1); Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

It is so ORDERED.²


_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Douglas

cc: Hon. Andrew J. Puccinelli, District Judge
Attorney General/Carson City
A. Grant Gerber & Associates
Elko County Clerk

²In light of this order, we deny as moot the motion for stay.