

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCINE PHILIPPONE,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT OF
THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK; AND THE
HONORABLE SANDRA L. POMRENZE,
Respondents,

and

JONATHAN BERNSTEIN,
Real Party in Interest.

No. 56819

FILED

SEP 20 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges the district court's oral rulings regarding child custody and reducing petitioner's severance pay.

Writ relief is generally not available when a petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170; Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004). Having considered the petition and the attached documents, we are not persuaded that extraordinary relief is warranted at this time. NRS 34.170; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). In particular, it appears that the district court entered an order establishing child custody on February 23, 2010. Neither party appealed from that order. NRAP 3A(b)(7). Subsequently, real party in interest moved the district court to modify the custody arrangement. A hearing was held on August 17, 2010, in which the district court purported to modify the February order, but the district court did not enter a written order. Petitioner then moved the district court to reconsider its August 17 oral ruling and real party in interest

opposed the motion and filed a countermotion to, among other things, terminate petitioner's severance pay. After a September 10, 2010, hearing on the parties' motions, the district court orally denied petitioner's request and reduced petitioner's severance pay. The district court stated that its oral rulings were effective without a written order pursuant to EDCR 7.50. It does not appear, however, that the district court's oral rulings modifying custody and reducing petitioner's severance pay are subject to EDCR 7.50, as the parties did not agree or stipulate to the modification or reduction.¹

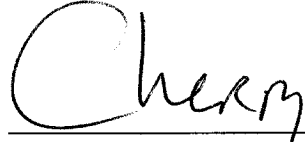
Regarding the district court's oral modification of the February 23 order and its oral ruling reducing petitioner's severance pay, those rulings are not effective until a written order is entered. See State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 454, 92 P.3d 1239, 1245 (2004) (stating that an order addressing a case's merits must be written, signed, and filed before it becomes effective). Once the district court enters a written order resolving the motion to modify custody, any aggrieved party may appeal.² NRAP 3A(b)(7) (authorizing an appeal from an order finally establishing or altering custody of a minor child). As for the severance pay issue, it appears that any reduction in petitioner's


¹We note that to the extent that the district court determines that adequate cause exists to modify its February 23 order as to custody, under Moser v. Moser, 108 Nev. 572, 836 P.2d 63 (1992), the district court is required to hold an evidentiary hearing.

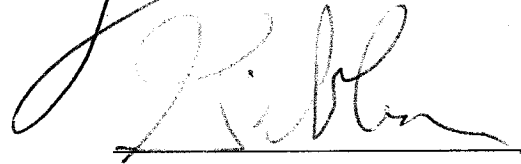
²We make no observations regarding the merits in the underlying proceedings, however, we express concern that the district court may have orally prohibited the parties from enrolling the children in any school in Nevada or New York. Pending the entry of a written order that reduces the district court's oral rulings to writing, we are confident that the district court will insist that the children be enrolled in and attend school.

severance pay is temporary until the final divorce decree is entered, after which any aggrieved party may appeal. NRAP 3A(b)(1). Accordingly, we

ORDER the petition DENIED.³


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Lionel Sawyer & Collins/Las Vegas
Pecos Law Group
Eighth District Court Clerk

³In light of this order, we deny as moot petitioner's motion for a stay.