

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID RICHEY,
Petitioner,
vs.

THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE;
AND THE HONORABLE ROBERT W.
LANE, DISTRICT JUDGE,
Respondents,
and
DENISE RICHEY,
Real Party in Interest.

No. 57354

FILED

DEC 16 2010

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

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order granting temporary primary physical custody to real party in interest and allowing real party in interest to leave Nevada until a January 2011 evidentiary hearing.

Having considered the petition and supporting documents, we are not persuaded that this court's intervention by way of extraordinary relief is warranted at this time. NRAP 21(b)(1); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). In particular, while the challenged order is temporary, an evidentiary hearing is scheduled for January 2011, during which the district court will resolve the child custody dispute. Moreover, we note that petitioner did not seek a stay of the district court's order, and even if this court were inclined to consider the writ petition and direct an answer, the district court's order is enforceable and real party in interest may leave Nevada until the January hearing. Thus, we conclude

that our intervention is not warranted at this time. Smith, 107 Nev. at 677, 818 P.2d at 851 (stating that whether to grant writ relief is discretionary with this court). Accordingly, we

ORDER the petition DENIED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Robert W. Lane, District Judge
Pecos Law Group
Gibson & Kuehn
Nye County Clerk