

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE ANNE PEARSON,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SANDRA L. POMRENZE, DISTRICT
JUDGE,
Respondents,
and
RYAN CADE PEARSON,
Real Party in Interest.

No. 59180

FILED

NOV 21 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingenu*
DEPUTY CLERK

ORDER GRANTING PETITION
FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order conditioning the commencement of an evidentiary hearing upon petitioner's deposit of \$25,000 into a blocked account by September 19, 2011, to secure payment of real party in interest's attorney fees if petitioner does not prevail on her motion to modify custody and relocate with the children to Ohio.¹

¹Because this writ petition is more appropriately resolved under a writ of mandamus standard, we deny petitioner's alternative request for a writ of prohibition.

A writ of mandamus is available to compel the performance of an act that the law requires “as a duty resulting from an office, trust, or station,” or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Writ relief is available when there is no plain, speedy and adequate remedy at law. NRS 34.170. It is within our discretion to determine if a writ petition will be considered. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

In the underlying proceedings, petitioner moved the district court to modify the parties’ joint physical custody arrangement and for permission to relocate to Ohio with their children. Real party in interest opposed the motion, to which petitioner replied. At an initial hearing on petitioner’s motion, the district court found that petitioner had presented adequate cause to hold an evidentiary hearing to address the motion’s merits. Rooney v. Rooney, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993). The district court also found that it would award attorney fees to the party that prevailed at the evidentiary hearing. Thus, the district court set the matter for an evidentiary hearing but conditioned the commencement of the hearing upon petitioner’s deposit of \$25,000 into a blocked account by September 19, 2011, to secure payment of real party in interest’s attorney fees if petitioner does not prevail on her motion to modify custody and relocate to Ohio with the children. This writ petition followed.

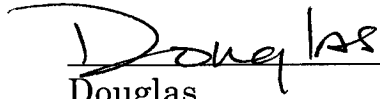
Because parents have a fundamental liberty interest in the care and custody of their children, they are entitled to certain due process

rights. Santosky v. Kramer, 455 U.S. 745, 753-54 (1982). Indeed, this court has held that, generally, parents involved “in a custody battle have the right to a full and fair hearing concerning the ultimate disposition of a child.” Moser v. Moser, 108 Nev. 572, 576, 836 P.2d 63, 66 (1992). Under Rooney, when the party moving to modify custody demonstrates adequate cause for holding a hearing, the district court does not have the discretion to deny the modification motion without holding a hearing. 109 Nev. at 542, 853 P.2d at 124. Here, the district court ignored this court’s precedent under Moser and Rooney when it ordered petitioner to deposit \$25,000 in an account to secure a hearing, even though the district court found that petitioner had demonstrated adequate cause for holding a hearing on petitioner’s motion to modify and relocate outside Nevada with the parties’ children.

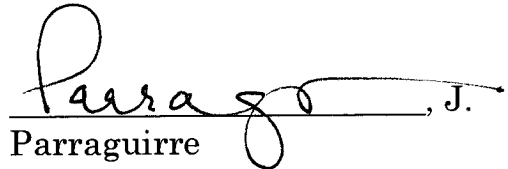
Accordingly, as the district court manifestly abused its discretion and because petitioner has no plain, speedy, and adequate remedy at law concerning her right to an evidentiary hearing, we conclude that our intervention by way of extraordinary relief is warranted. See NRS 34.160 (providing that writ relief may be available to compel the performance of an act that the law requires); NRS 34.170 (stating that writ relief may be appropriate when there is no plain, speedy, and adequate legal remedy). Thus, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMAUS instructing the district court to vacate the portion of its order that provides that the evidentiary hearing scheduled on petitioner’s motion will be vacated unless petitioner deposits \$25,000 into a blocked account. The district

court is further directed to reassign this matter to a new family court judge and that new department is directed to schedule an evidentiary hearing on petitioner's motion.

 _____, J.
Douglas

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Pecos Law Group
James M. Davis Law Office
Eighth District Court Clerk