IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA MCCLARREN,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE CYNTHIA N. GIULIANI, DISTRICT JUDGE,
Respondents,
and
JUSTIN A. KNOX,
Real Party in Interest.

No. 60671

FILED

APR 19 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature] DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court oral ruling granting temporary custody of a minor child to a nonparty.[1]

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). It is within our discretion to determine if writ relief will be granted. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioner bears the burden of demonstrating that

[1]Petitioner has not filed a written order memorializing the district court's oral ruling, and it is not clear that a written order has been entered. Although the oral ruling will not be effective until it is reduced to writing, signed, and filed, this court nevertheless may consider the ruling in the context of this writ petition. See State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 92 P.3d 1239 (2004).

extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

As an initial matter, petitioner contends that she was not given proper notice and an opportunity to be heard before the district court granted custody to the temporary guardian. Petitioner has not, however, developed this argument by explaining what, if any, notice she was given and why she believes that notice was deficient. Also, petitioner appeared, through counsel, at the March 21, 2012, hearing, where she argued that the district court could not award custody to the temporary guardian, and she has not explained why this was an inadequate opportunity to be heard. Moreover, while petitioner contends that, at that hearing, the court essentially made a determination as to her parental rights, it appears from the documents before us that the district court had transferred, at least temporarily, primary physical custody of the child away from petitioner in favor of real party in interest by January 31, 2012, such that the district court's decision at the March 21, 2012, hearing did not change petitioner's custodial rights. Thus, we conclude that petitioner has not met her burden of establishing that writ relief is warranted based on a lack of notice and opportunity to be heard. See id.; Smith, 107 Nev. at 677, 818 P.2d at 851.

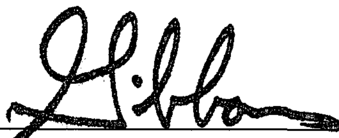
Additionally, with regard to petitioner's argument that the district court failed to apply the correct standard required by NRS 125.500, the district court's minutes identify several serious points of concern on which it concluded that awarding petitioner custody would be detrimental to the child and that awarding custody to the nonparent would be in the child's best interest. See NRS 125.500(1) (permitting the district court to award custody to a nonparent without the parents' consent when "an award of custody to a parent would be detrimental to

the child and the award to a nonparent is required to serve the best interest of the child"); Locklin v. Duka, 112 Nev. 1489, 1495-96, 929 P.2d 930, 934-35 (1996) (identifying factors to be considered when deciding whether a child should be placed with a nonparent pursuant to NRS 125.500). As petitioner has not submitted any documents to this court demonstrating that the district court's findings were unsupported, we conclude that she has not met her burden of establishing that writ relief is warranted in this situation. See Pan, 120 Nev. at 228, 88 P.3d at 844; see also Locklin, 112 Nev. at 1493, 929 P.2d at 933 (explaining that the district court's decision as to child custody will not be overturned in the absence of an abuse of the district court's broad discretion).

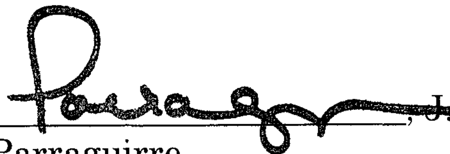
Accordingly, we

ORDER the petition DENIED.[2]

________________________, J.
Douglas



________________________, J.
Gibbons



________________________, J.
Parraguirre

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[2]Petitioner also argues in part that the district court lacked jurisdiction to enter the order granting custody to the nonparty. An order entered in excess of the district court's jurisdiction would ordinarily be the subject of a petition for a writ of prohibition. See NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Here, however, as petitioner has not established that the district court's order was entered in the absence of jurisdiction, the issuance of a writ of prohibition is not warranted.

cc: Hon. Cynthia N. Giuliani, District Judge
Mann Law Firm
Bowen Law Offices
Eighth District Court Clerk