

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35648

SHERRY SHREVE,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE, AND THE
HONORABLE CHARLES M. MCGEE,
DISTRICT JUDGE,

Respondents,

and

DEBRA MILLER,

Real Party in Interest.

FILED

JUL 13 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DISMISSING PETITION FOR WRIT OF MANDAMUS
AND DISAPPROVING STIPULATION

This original petition for a writ of mandamus seeks an order to compel the district court to conduct a hearing regarding custody and visitation of a minor child.

On February 17, 1999, petitioner moved the district court to establish custody and visitation with the minor child. Subsequently, a hearing was set for January 24, 2000. On January 21, 2000, the district court continued the hearing on the custody and visitation issues pending the U.S. Supreme Court ruling in the Washington State case concerning the rights of non-parents to visitation with minor children. See Troxel v. Granville, 969 P.2d 21 (Wash. 1998), aff'd 68 U.S.L.W. 4458 (U.S. Wash. Jun. 05, 2000).

On February 15, 2000, petitioner filed the present petition for writ of mandamus in this court. On March 29, 2000, this court directed the real party in interest, on behalf of respondents, to file an answer against issuance of the requested writ, because it appeared that petitioner had set forth issues of arguable merit and had no adequate legal remedy. On April 10, 2000, the parties filed in this court a

signed stipulation to grant the writ relief. The petitioner and real party in interest agree that it is in the best interests of the child to have visitation with petitioner and therefore request that this court recognize the parties' stipulation regarding the petitioner having visitation with the child and issue a writ of mandamus directing the district court to hold an evidentiary hearing to determine the visitation schedule that should be granted to the petitioner.

A writ of mandamus is available to compel the performance of an act, which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. See NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine whether relief will be granted. See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

Having reviewed the documents before this court, we first conclude that because writ relief is discretionary the parties may not stipulate to the issuance of a writ of mandamus. Second, as the U.S. Supreme Court issued a decision in Troxel on June 5, 2000, the petition is now moot.

Finally, we note that through their stipulation, the parties seek relief beyond what was sought in the writ petition. Specifically, the parties ask this court to grant the stipulation regarding visitation. Such relief, beyond the scope of the petition, is improperly requested in this context and should be addressed in the district court. Accordingly,

we dismiss the petition as moot and disapprove the stipulation.

It is so ORDERED.¹

<u>Young</u>	J.
Young	
<u>Agosti</u>	J.
Agosti	
<u>Leavitt</u>	J.
Leavitt	

cc: Hon. Charles M. McGee, District Judge
Attorney General
Myra A. Sheehan
Richard F. Cornell
Washoe County Clerk

¹We deny as moot the motion to expedite review filed on February 16, 2000.