

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KRYSTAL LEIGH SWALINKAVICH,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
CHERYL B. MOSS, DISTRICT JUDGE,
Respondents,
and
JOSHUA LUKE SWALINKAVICH,
Real Party in Interest.

No. 69288

FILED

DEC 29 2015

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a temporary child custody order.

Petitioner Krystal Leigh Swalinkavich seeks a writ of mandamus directing the district court to stay its temporary child custody order, which provided that the parties would have joint legal and physical custody of the child with each parent exercising parenting time on a rotating three-month schedule. Krystal also seeks an order compelling the district court to order real party in interest Joshua Luke Swalinkavich to pay her child support.

As the parties do not have a previous custody order, by law, they would have joint legal custody and joint physical custody of the minor child in the absence of the district court's order. See 2015 Nev. Stat., ch. 445, § 4, at 2582 ("If a court has not made a determination regarding the custody of a child, each parent has joint legal custody and joint physical

custody of the child until otherwise ordered by a court of competent jurisdiction.”). Thus, by asking that she be given primary physical custody pending resolution of the underlying proceedings, Krystal is not actually seeking a stay of the district court’s order, but instead, is asking this court to direct the district court to enter a new custody order changing the default arrangement.

To obtain the relief she seeks, Krystal has the burden to demonstrate that the district court either failed to perform an act that it was compelled by law to perform or that the district court exercised its discretion arbitrarily or capriciously. See NRS 34.160; *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). In her petition, Krystal argues that the district court failed to consider the best interest of the child and, specifically, research indicating that separation from the primary caregiver may be harmful to the child. She also points to her allegations that Joshua has exhibited violent and controlling behavior towards both Krystal and the child. In his answer to the petition, Joshua disputes Krystal’s allegations as to his behavior and asserts that the district court did, in fact, consider the best interest of the child at the hearing that resulted in the temporary custody order.

Despite having the burden of demonstrating that extraordinary relief is warranted and the responsibility to provide the documents necessary to understand the pending issues, Krystal has not provided this court with a transcript of the district court hearing that resulted in the challenged order. See NRAP 21(a)(4) (requiring the petitioner to submit an appendix containing all documents “essential to understand the matters set forth in the petition”); *Pan*, 120 Nev. at 228,

88 P.3d at 844. In light of Joshua's assertion that the district court did consider the best interest factors and Krystal's failure to provide the relevant transcript, we cannot conclude that Krystal has met her burden of showing that extraordinary relief is warranted based on her allegation that the district court failed to fulfill its duty to consider the child's best interest in issuing the temporary custody order.¹ See NRAP 21(a)(4); *Pan*, 120 Nev. at 228, 88 P.3d at 844; *cf. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that, in the context of an appeal, "[w]hen an appellant fails to include necessary documentation in the record, [the appellate court] necessarily presume[s] that the missing portion supports the district court's decision").

Moreover, the remainder of Krystal's arguments regarding child custody concern conflicting evidence that the parties presented to the district court in support of their respective positions.² In the district court, Krystal and Joshua both leveled serious allegations at each other and contested the other's evidence and arguments. In such a situation, it was

¹Similarly, Joshua disputes Krystal's assertion that technical difficulties prevented her from fully hearing and participating in the temporary custody hearing. Because Krystal has not provided the transcript, we are unable to conclude that she has met her burden to demonstrate that extraordinary relief is warranted on this basis.

²With regard to Krystal's arguments that the three-month rotating schedule was generally improper given the child's age, we note that it appears the district court only imposed this schedule in light of Krystal's decision to take the child to Virginia, which prevented the court from imposing a schedule that would allow both parties more frequent contact with the child. Indeed, the district court's order provides that, if Krystal were to move back to Nevada, the schedule would be changed to either a three-day or a seven-day rotating schedule.


within the district court's discretion to weigh the parties' evidence and arguments and reach a resolution. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007) (recognizing "the district court's broad discretionary powers to determine child custody matters"). And having considered the parties' arguments and the appendix, we conclude that Krystal has failed to demonstrate that the district court's order constituted an arbitrary or capricious exercise of that discretion.

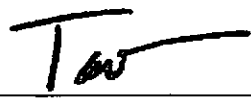
As to child support, Krystal asserts that the district court should be directed to order Joshua to pay her child support pending resolution of the underlying proceedings. Although it did not order Joshua to pay monthly child support, the district court's order required Joshua to pay all costs of plane tickets for transferring custody of the child, which the court said would go towards child support. The district court deferred other issues relating to child support, noting that any arrearages would relate back to October 1, 2015.


In the writ petition, Krystal has not discussed any authority or made any cogent argument to demonstrate that the district court was required to order Joshua to pay her temporary support or that the portion of the district court's order regarding support constituted an arbitrary or capricious exercise of discretion. As a result, we cannot conclude that Krystal has met her burden of demonstrating that extraordinary writ relief is warranted to order the district court to change its temporary order as it relates to child support. *See Pan*, 120 Nev. at 228, 88 P.3d at 844; *cf. Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting, in the context of a direct appeal, that an appellate court need not consider claims that are not cogently argued or supported by relevant authority). Because Krystal has not demonstrated

that the district court failed to perform an act that it was required by law to perform or that the court exercised its discretion arbitrarily or capriciously, we deny the petition for a writ of mandamus. *See Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558; *Pan*, 120 Nev. at 228, 88 P.3d at 844.

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Pintar Albiston LLP
Molnar Family Law
Eighth District Court Clerk

³In light of this order, we vacate the temporary stay ordered by this court on December 4, 2015.