

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD PIPKIN,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, AND THE  
HONORABLE STEVEN E. JONES,  
DISTRICT JUDGE, FAMILY COURT  
DIVISION,

Respondents,

and

CHERYL PIPKIN,

Real Party in Interest.

No. 36371

**FILED**

APR 05 2001

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

ORDER DENYING PETITION FOR

WRIT OF PROHIBITION AND MANDAMUS

This original petition for a writ of prohibition and mandamus challenges an order of the district court denying petitioner's motion to dismiss for lack of subject matter jurisdiction and awarding custody of the minor children to the real party in interest.

A writ of prohibition is the proper remedy to restrain a district court from exercising a judicial function without or in excess of its jurisdiction.<sup>1</sup> On the other hand, 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,<sup>2</sup> or to control an arbitrary or

<sup>1</sup>Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991); see also NRS 34.320.

<sup>2</sup>NRS 34.160.

capricious exercise of discretion.<sup>3</sup> In either case, the writ may be issued only where "there is not a plain, speedy and adequate remedy in the ordinary course of law."<sup>4</sup> The issuance of either writ "is purely discretionary" with this court.<sup>5</sup>

We have considered this petition for a writ of prohibition and mandamus and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. We therefore deny the petition.<sup>6</sup>

It is so ORDERED.

Maupin, C.J.  
Maupin

Young, J.  
Young

Becker, J.  
Becker

cc: Hon. Steven E. Jones, District Judge,  
Family Court Division  
Patrick T. Nohrden  
Leavitt Law Firm  
Clark County Clerk

<sup>3</sup>Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>4</sup>NRS 34.170; NRS 34.330; see also Guerin v. Guerin, 114 Nev. 127, 953 P.2d 716 (1998).

<sup>5</sup>Smith, 107 Nev. at 677, 818 P.2d at 851.

<sup>6</sup>See NRAP 21(b); Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).