


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARRIE TERRELL,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
BRIDGET E. ROBB, DISTRICT JUDGE,
Respondents.

No. 71586

FILED

OCT 27 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT.
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying a request to appear telephonically at the underlying contempt hearing.

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 a manifest abuse of discretion. *See* NRS 34.160; *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). It is petitioner's burden to demonstrate that our extraordinary intervention is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Petitioner sought leave to appear telephonically at a criminal contempt hearing in the underlying annulment proceeding, citing SCR IX-B(A) Rule 2, which governs telephonic appearances for civil and family court proceedings. The district court subsequently denied this request, noting that the upcoming contempt proceeding was "criminal in nature"

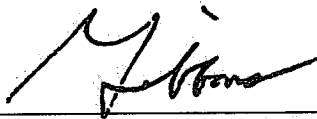
and would involve the presentation of evidence. In support of this conclusion, the district court cited *Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 263 P.3d 235 (2011), for the proposition that “[t]he right to be present is rooted in the Confrontation Clause and the Due Process Clause of the Federal Constitution. The confrontation aspect arises when the proceeding involves the presentation of evidence.”

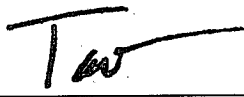
In seeking mandamus relief before this court, petitioner references SCR IX-A(A) Rule 2, which governs telephonic appearances in criminal proceedings, to argue that public policy supports allowing telephonic appearances in such cases to, among other things, “reduce litigation costs.” Further, petitioner asserts that the district court has conflated the right to be present at a proceeding with an inability to control that right, arguing that the right to be present at criminal proceedings can be waived. But petitioner did not cite SCR IX-A(A) Rule 2 to the district court or present any argument to the district court asserting that her telephonic participation in the hearing would not be inconsistent with her right to be present at that hearing.

In light of petitioner’s failure to present these arguments to the district court in the first instance, we conclude she has not demonstrated that our intervention by way of extraordinary relief is warranted, and we therefore deny the petition. *Pan*, 120 Nev. at 228, 88 P.3d at 844. Our denial is without prejudice, however, to petitioner’s right to seek further relief from the district court based on the forgoing authorities and, if she is aggrieved by the district court’s resolution of such

a request, to file a new request for mandamus relief challenging that determination.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Bridget E. Robb, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney's Office
Washoe District Court Clerk