IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SPRING ENGLISH,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE LINDA MARQUIS, DISTRICT JUDGE,
Respondents,
and
ADAM ENGLISH,
Real Party in Interest.

No. 74455

FILED

NOV 28 2017

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original emergency petition for a writ of mandamus challenges a district court order denying a motion to establish a temporary parenting time schedule.

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; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Writ relief is typically not available, however, when the petitioner has a plain, speedy, and adequate remedy at law. *See* NRS 34.170; *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558. Moreover, whether to consider a writ petition is within this court's discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). And petitioner bears the burden of demonstrating that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition, we conclude that petitioner has failed to demonstrate that extraordinary writ relief is warranted. *See id.* Accordingly, we deny the petition. *See* NRAP 21(b)(1); *Smith*, 107 Nev. at 677, 818 P.2d at 851.

It is so ORDERED.

_____, C.J.
Silver

TAO, J., concurring:

The petitioner waited more than 97 days after the district court's ruling to bother to seek relief from this court. If something this belated and untimely qualifies as an "emergency" necessitating immediate and extraordinary intervention by this court, then there is no petition that we could ever legitimately refuse to grant. I concur in the denial of the petition.

_____, J.
Tao

GIBBONS, J., dissenting:

The circumstances of this case are troubling and, at the least, warrant an answer. The present matter arose when, as relevant here, the district court determined that an evidentiary hearing was necessary before ruling on petitioner's motion to modify custody, but inexplicably scheduled that hearing to take place nearly six months later. *See* SCR 251 (requiring

matters affecting custody or visitation of minor children to be resolved within six months of the date the issues are contested by a responsive pleading unless the court finds it is an extraordinary situation based upon unforeseeable circumstances and enters specific findings of fact to justify an extension of time). Given this extreme delay, in which petitioner would likely continue to have minimal contact with the children, one of whom is her natural child and is not the child of the real party in interest, she sought a temporary order providing her with at least limited parenting time until her overarching motion was resolved. But the district court summarily denied that request even though it is well established that *any* custody determination must be supported by specific findings and an adequate explanation for the decision. *See Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1143 (2015). Indeed, it seems that the district court failed to even consider whether some form of supervised visitation with the children was appropriate under the circumstances presented here. Because the underlying proceeding was characterized by inexplicable delay and summary disposition, despite the important issues being presented, I must dissent.

_____, J.
Gibbons

cc: Hon. Linda Marquis, District Judge, Family Court Division
Robert W. Lueck, Ltd.
Walsh & Friedman, Ltd.
Eighth District Court Clerk