IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LANDON ACUNA,

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

BOBBIE JO ROHRER, F/K/A BOBBIE JO ACUNA, AND SHAWNA MARIE ACUNA-ROHRER,

Real Parties in Interest.

No. 36570

FILED

FEB 06 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of prohibition challenging a district court's jurisdiction to hold a hearing to modify child support obligations pursuant to NRS 125B.110. Petitioner, David Landon Acuna, argues that the district court lacks subject matter jurisdiction to hold the hearing because it lacks subject matter jurisdiction to modify child support obligations when the child in question is an adult handicapped child. We conclude that extraordinary relief is not warranted because the district has not acted in excess of its jurisdiction, and we deny the petition for a writ of prohibition.

A writ of prohibition may issue within this court's discretion to arrest a district court's actions when those actions are without or in excess of the district court's jurisdiction. See NRS 34.320. However, an extraordinary writ will not issue if there is a plain, speedy and adequate remedy at law, such as an appealable order. See NRS 34.330; see also

Diotallevi v. District Court, 93 Nev. 633, 635, 572 P.2d 214, 215 (1977). The exercise of extraordinary relief is discretionary with this court. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

In this case, any district court order modifying child support pursuant to NRS 125B.110 is appealable. See NRAP 3A(b)(2). Moreover, Acuna has not advanced any evidence to suggest that an appeal after the hearing on the motion to modify would be inadequate. We conclude, therefore, that the circumstances of this case do not merit the exercise of our extraordinary writ powers in light of the alternate method of appeal, and we deny the petition for a writ of prohibition.

We also conclude that the district court did not act in excess of its jurisdiction because it has subject matter jurisdiction to hear the motion to modify child support. Although generally the district court only has jurisdiction to modify child support orders involving minor children, NRS 125B.110 permits the district court to order and modify child support for handicapped adult children. Cf. Norris v. Norris, 93 Nev. 65, 67, 560 P.2d 149, 150 (1977). NRS 125B.110 provides an express exception allowing child support for handicapped children beyond the age of majority, and nothing in the statute or case law suggests that the district court's jurisdiction to modify those orders evaporates when the child attains majority. See Greco v. United States, 111 Nev. 405, 412, 893 P.2d 345, 350 (1995); see also Scott v. Scott, 107 Nev. 837, 841, 822 P.2d 654, 656 (1991); Minnear v. Minnear, 107 Nev. 495, 496, 814 P.2d 85, 86 (1991).

Likewise, the fact that the motion to modify was filed after both the original child support obligations ended and the child attained the age of majority is irrelevant. Prior agreements or stipulations cannot alleviate a parent's

child support obligations to a handicapped child under NRS 125B.110. See Scott, 107 Nev. at 841, 822 P.2d at 656. Additionally, "[i]f the legislature intended to require that a motion to modify could only be made before the child reaches 18, the legislature could have expressly included such a requirement in the statute." Ramacciotti v. Ramacciotti, 106 Nev. 529, 531, 795 P.2d 988, 989 (1990). Because the express language of NRS 125B.110 does not require the motion to modify to be filed before the child attains the age of majority, we conclude that the fact that the motion in this case was filed after the child attained the age of majority does not affect the district court's subject matter jurisdiction.

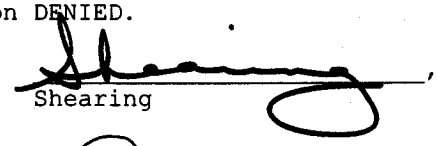
Acuna also argues that Bobbie Jo Rohrer lacks standing to file the motion to modify because the child, Shawna, is an adult who has not been adjudicated a ward or incompetent. A real party in interest is one who possesses the right to enforce the claim and who has a significant interest in the litigation. See NRCP 17(a); see also Painter v. Anderson, 96 Nev. 941, 943, 620 P.2d 1254, 1255-56 (1980). Traditionally, the party entitled to enforce a claim for child support is the custodial parent because that parent is usually responsible for managing the financial needs associated with support payments. See Morelli v. Morelli, 102 Nev. 326, 328, 720 P.2d 704, 705-06 (1986).

In this case, Bobbie Jo is essentially Shawna's de facto physical custodian who is in charge of the financial aspects of Shawna's support and medical care. Therefore, we conclude that Bobbie Jo has sufficient interest in the enforcement of the child support orders to have standing, despite the fact that Shawna is technically an adult who could bring the claim herself. Moreover, nothing in NRS 125B.110

restricts standing to the adult child to enforce a child support order.

We conclude, therefore, that Acuna has not demonstrated that the appeal of the final judgment after the motion to modify would be inadequate such that the exercise of our extraordinary writ powers is warranted. We also conclude that the district court has subject matter jurisdiction to hold a hearing on the motion to modify child support pursuant to NRS 125B.110, and did not act in excess of its jurisdiction. We therefore deny this petition for a writ of prohibition.

ORDER the petition DENIED.



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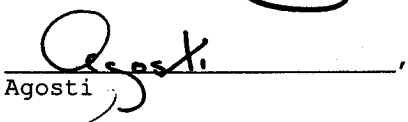

_____, J.
Agosti

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Leavitt

cc: Hon. Charles M. McGee, District Judge,
Family Court Division
Mark L. Sturdivant
Law Office of Richard C. Blower
Washoe County Clerk