IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL DOWNES,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MATHEW HARTER, DISTRICT JUDGE,
Respondents,
and
KAREN A. DOWNES, N/K/A KAREN MACAULAY,
Real Party in Interest.

No. 72871

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus or prohibition challenging a district court order requiring the parties to mediate twice at petitioner's expense before bringing any motions before the court.[1]

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Having considered the parties' arguments and the documents on file herein, we conclude that our extraordinary intervention is warranted. *See Smith v. Eighth Judicial Dist.*

[1]We note that, although petitioner titled this matter a petition for a writ of mandamus or prohibition, he only seeks mandamus relief in the petition.

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Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (explaining that whether to consider a writ petition is discretionary).

Here, because of the number of motions filed in the underlying proceeding, the district court entered an order that required the parties to attend two separate mediations with different mediators at petitioner's expense, prior to either party filing a motion for the court's consideration. Subsequent to the entry of this order, a dispute arose as to the amount of child support petitioner Daniel Downes should be required to pay after the parties' eldest child turned 18 years of age and graduated from high school. Daniel filed a motion to modify these child support payments without following the mediation requirement and the district court issued a minute order vacating the hearing on the motion and ordering the parties to comply with its prior order and mediate twice prior to re-noticing Daniel's motion. After the parties attended a mediation for four to five hours, spread across two sessions, to no avail, Daniel's counsel contacted the district court's chambers seeking to file his motion without attending a second mediation, which he believed would be futile. The district court denied this request, requiring the parties to participate in a second, separate mediation per its prior directive, and this petition followed.

As a general rule, district court judges have "a duty to sit and preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard, or other compelling reason to the contrary." *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1253, 148 P.3d 694, 699 (2006) (internal quotation marks omitted). In his petition, Daniel challenges the propriety of the district court's imposition of a blanket requirement that the parties mediate before any motion can be filed or considered by the court. In responding to this argument, real party in

interest Karen Downes points to NRS 3.225(1)—the same statute relied on by the district court in entering its mediation order—as supporting the imposition of a requirement that the parties participate in mediation sessions before any motions can be filed.

NRS 3.225(1) states that, "[t]he family court shall, wherever practicable and appropriate, encourage the resolution of disputes before the court through nonadversarial methods or other alternatives to traditional methods of resolution of disputes." But while this rule requires judges to encourage alternative dispute resolution where practicable and appropriate, nothing in the statute authorizes the district court to enter a blanket requirement mandating mediation before the court will consider any motion or allow a motion to be filed, much less require two such sessions before a motion will be considered or the party can file a request for relief. Indeed, neither the district court nor Karen point to any authority suggesting that NRS 3.225(1), in and of itself, authorizes the imposition of such a requirement and our research has likewise revealed no such authority.[2]

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[2]Interestingly, the district court's order establishing the mediation requirement begins by stating that "NRCP 1 and EDCR 1.10 state that the procedure in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action." While this statement appears to be in reference to the court's decision to decide the matter without a hearing, we note that the court's imposition of this mediation requirement as a prerequisite for bringing any motion before the court has the opposite effect, as it serves only to increase the cost to the parties and delay their ability to have any disputes resolved. *See* NRCP 1 (providing that the rules of procedure must be construed to ensure "the just, speedy, and inexpensive determination of every action."); EDCR 1.10 (providing that the Eighth Judicial District Court's rules of practice must be construed to "secure the proper and efficient administration of the . . . court and to promote and facilitate the administration of justice.").

Moreover, to the extent the district court was attempting to issue a restrictive order pursuant to *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, while the district court may impose restrictive orders limiting a litigant's access to the court sua sponte, such restrictive orders are disfavored when other remedies, like sanctions, are available to curb the parties' behavior. *See* 121 Nev. 44, 60, 110 P.3d 30, 42 (2005) ("[W]e note a general reluctance to impose restrictive orders when standard remedies like sanctions are available and adequate to address the abusive litigation."), *overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008). Additionally, if the court decides to issue a restrictive order, it must follow a four-part process, which includes providing the offending party notice and an opportunity to respond and making substantive findings, before doing so. *Id.* at 58–62, 110 P.3d at 41–44 (explaining the four steps a district court must take before issuing a restrictive order). And importantly, the restrictive order cannot be based merely on litigiousness, and the parties' filings must be not only repetitive or abusive, but also without an arguable factual or legal basis, or intended to harass. *Id.* at 61, 110 P.3d at 43. Here, the district court failed to apply the analysis set out in *Jordan* and it appears, from the documents before us, that the district court's decision was improperly based solely on the litigiousness of the parties.

Based on the foregoing analysis, we must conclude that the district court's imposition of this blanket mediation requirement constituted an arbitrary and capricious exercise of discretion and that our extraordinary intervention is warranted. *See* NRS 34.160; *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558. Accordingly, we grant the petition and direct the clerk of the court to issue a writ of mandamus directing the

district court to vacate its order imposing the mediation requirement and instructing the district court to decide the underlying motion to reduce child support on its merits.[3]

It is so ORDERED.[4]

Silver, C.J.

Gibbons, J.

cc: Hon. Mathew Harter, District Judge
Standish Naimi Law Group
Roberts Stoffel Family Law Group
Eighth District Court Clerk

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[3]The mediation order's requirement that Daniel pay the costs of both mediations regardless of which party would be moving the court for relief, albeit subject to reimbursement under certain circumstances, is also troubling. But given our resolution of this matter, it is unnecessary to address the propriety of this aspect of the mediation order.

Further, we decline to consider Daniel's arguments regarding child support, as this issue should be resolved by the district court in the first instance. And finally, to the extent they are not addressed in this order, we have considered the parties' remaining arguments and conclude that they are without merit.

[4]The Honorable Jerome T. Tao, Judge, voluntarily recused himself from participation in the decision of this matter.