IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MINH NGUYET LUONG,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE DAWN THRONE, DISTRICT JUDGE,
Respondents,
and
JAMES W. VAHEY,
Real Party in Interest.

No. 84522-COA

FILED

APR 25 2022

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

This original, emergency petition for a writ of mandamus or prohibition challenges a district court order temporarily modifying custody and requiring the parties' children to attend the Turning Point for Families program and "sequester" with real party in interest afterward.

Petitioner Minh Luong and real party in interest James Vahey (Jim) were divorced in 2021 and awarded joint legal and physical custody of their three minor children. Since the initial custody order was entered in September 2019, the parties have vigorously contested child-related matters, resulting in orders for counseling and therapy, the appointment of a guardian ad litem, several school changes, and multiple temporary alterations of the custodial arrangement. An evidentiary hearing was held in November 2021 on school choice and mental health treatment for one of the children, at which the court noted issues with the children's declining behavior. In February 2022, the court held a status check hearing at which

the parties' deteriorating parent/child relationships were discussed; while the court stated that it could have an evidentiary hearing to modify custody, it chose instead to continue with temporary orders designed to help improve the relationships with the goal of soon returning to the original joint custody arrangement. In so deciding, the court determined that "intensive therapeutic interventions" likely were warranted and mentioned the Turning Points for Families program in New York—which provides "reunification therapy for severe parental alienation or for unreasonably disrupted parent-child relationships"—as a possible remedial measure that could be ordered. The court indicated it would send information on the program to all counsel and placed the burden on Jim to request a court order if he believed the program would be beneficial.

On March 15, 2022, Jim filed a motion asking that the court order the children's participation in the Turning Points for Families program on an emergency basis. A nonevidentiary hearing was held on March 21 on order shortening time, and the next day, the district court entered an order concluding that the family was "in crisis and needs intensive intervention" and determining that it was in the children's best interest to participate with Jim in the program from April 8-12. As recommended by the program, the court granted Jim temporary sole legal and physical custody of the children for at least 90 days (unless a shorter period was recommended by the program's director) following the program's conclusion and directed that neither Minh nor her associates have any contact with the children during this sequestration period. The court ordered that, to lift the sequestration period, Minh's therapist must provide documentation satisfactory to the program's director that Minh "is ready, willing, and able to support" the children's relationship with Jim. Although

the court's order states that the court "may" set the matter for review in 90 days, the order did not specifically do so, essentially leaving the sequestration period's end date uncertain. Minh filed an emergency motion concerning the court's orders on this matter, which the district court scheduled for argument on May 17.

Minh then filed this petition on April 8, challenging the district court's order as to both the children's participation in the program and the sequestration with Jim afterward. That same day, we set an expedited briefing schedule. Jim has timely filed his answer, and Minh has timely filed her reply. Additionally, Jim timely filed a supplement to his answer, as directed.

According to the parties' responsive briefing, participation in the program did not go smoothly. Although there are somewhat differing accounts of what occurred, it appears that one of the children was taken by the police to a hospital for mental health reasons, which, according to Jim, resulted in that child's non-attendance at the program and in Jim and the other children participating in the program in only a limited capacity. Nevertheless, according to Jim, the child was released from the hospital and all three of the children are now back in Nevada and under Jim's care.

DISCUSSION

Having considered the parties' briefs and supporting documentation, we are not persuaded that our extraordinary and discretionary intervention is warranted at this time. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the party seeking writ relief bears the burden of showing such relief is warranted); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991) (recognizing that writ relief is an extraordinary remedy and that the appellate courts have sole discretion in

determining whether to entertain a writ petition). In particular, the program has concluded, such that with regard to the portion of the petition seeking to vacate the order directing the children's participation, this court can grant no effective relief, rendering the petition moot. *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); *see also Langston v. State, Dep't of Motor Vehicles*, 110 Nev. 342, 344, 871 P.2d 362, 363 (1994). Further, the sequestration period was based on the recommended follow-up to the program, and given the disruption to the family's participation in the program, it is unclear that the sequestration period is still advised, especially with provisions prohibiting all contact between Minh and the children and with no firm time of conclusion. We expect the district court to soon hold a hearing to determine the next step. Indeed, Minh has moved the court to order full disclosure of information related to the police/hospitalization incident and to alter/amend/reconsider the challenged order, and there is a hearing scheduled for May 17 on her latter motion, albeit not an evidentiary hearing. We expect that the district court will consider this matter no later than at that hearing.

This writ petition arose from the district court's temporary orders, entered after the court apparently determined that the situation required more urgent action than could be accomplished by a full evidentiary hearing on modifying custody, which both parties have sought to some extent since 2020. Ultimately, in resolving these issues, the district court will likely need to move forward with an evidentiary hearing. *See Arcella v. Arcella*, 133 Nev. 868, 871-72, 407 P.3d 341, 345-46 (2017) (explaining that "[a] district court must hold an evidentiary hearing on a request to modify custodial orders if the moving party demonstrates adequate cause" and "abuse[s] its discretion by deciding adequate cause

solely upon contradictory sworn pleadings and arguments of counsel" (internal quotation marks and alterations omitted)); *see also, e.g.*, *Martin v. Martin*, 120 Nev. 342, 346, 90 P.3d 981, 983 (2004) (recognizing that a custodial parent's substantial or pervasive interference with a noncustodial parent's parenting time can constitute changed circumstances). As decisions regarding custody matters are within the district court's sound discretion, *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018), we leave that determination to the district court in the first instance.[1]

Under the present circumstances, where the program is over but participation was limited and motions regarding the custody situation remain pending in district court, we determine that our extraordinary intervention is not warranted at this time. While nothing in this order precludes the parties from seeking relief upon further development in the district court, with respect to the matter currently before us, we

ORDER the petition DENIED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[1]We note, however, that an evidentiary hearing must be conducted when the guidelines established in *Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 982 (2022), and *Rooney v. Rooney*, 109 Nev. 540, 543, 853 P.2d 123, 125 (1993), are met, even on issues beyond physical custody. *See Arcella*, 133 Nev. at 871-72, 407 P.3d at 345-46; *see also* NRS 125C.0045(1)(a) and (b) (stating the district court may modify or vacate its orders at any time if it is in the best interest of the children).

cc: Hon. Dawn Throne, District Judge, Family Court Division
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Eighth District Court Clerk