

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID DIXON,
Petitioner,


vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DEDREE BUTLER, DISTRICT JUDGE,
Respondents,
and
JANAE DIXON,
Real Party in Interest.

No. 88212-COA

FILED

JUN 21 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER DENYING PETITION
FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS*

David Dixon filed an original petition for a writ of prohibition and a writ of mandamus¹ challenging a temporary child custody modification order. David argues that his due process rights were violated by the court entering the temporary custody order prior to him presenting his case during the underlying proceedings.

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. NRS 34.160; *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest

¹David titled his writ petition as one seeking a writ of prohibition, but within the petition sets forth the standards for a writ of mandamus. In his reply, he still argues both but states that a mandamus petition is likely more appropriate. As a result, this order addresses both.

the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. NRS 34.320; *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Mandamus and probation are extraordinary remedies, and it is within the discretion of this court to determine if a petition will be considered. *Smith*, 107 Nev. at 677, 818 P.2d at 851. Petitioner bears the burden to show that extraordinary relief is warranted, and such relief is proper only when there is no plain, speedy, and adequate remedy at law. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004).

The district court's order was a temporary order and was entered several months ago. This court previously entered an order directing real party in interest Janae Dixon to file an answer and David to file a reply, with specific instructions to provide information as to the current circumstances and procedural posture of the case. Janae filed an answer with appendices providing the requested information, which included that there is a different temporary child custody order that is now in place and that David did not challenge this new order in his writ petition. David filed a reply, in which he acknowledges that there is a more recent order in place, but argues that it should be vacated once the prior order that he challenged in his writ petition is vacated.

Based on our review of the documents before us, we conclude David has not demonstrated that our extraordinary intervention is warranted. *Id.* at 228, 88 P.3d at 844. David failed to provide the video exhibits the district court relied upon in entering the first temporary child custody order, and he failed to challenge or even mention the new temporary child custody order in his writ petition, instead only addressing it in his reply brief. See *Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81,

88 n.2 (2016) (concluding that an issue raised for the first time in a reply brief was waived). As such, we conclude that David has failed to demonstrate that writ relief is warranted and deny the petition. *See Pan*, 120 Nev. at 228, 88 P.3d at 844.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Dedree Butler, District Judge, Family Division
McFarling Law Group
Smith Legal Group
Eighth District Court Clerk