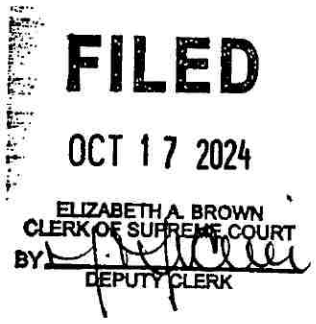
IN THE SUPREME COURT OF THE STATE OF NEVADA

CATHERINE TRAPASSO,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; THE HONORABLE DANIELLE K. PIEPER, DISTRICT JUDGE; AND THE HONORABLE JERRY A. WIESE, CHIEF JUDGE,
Respondents,
and
DANNY SCHAMMA,
Real Party in Interest.

No. 88127



ORDER DENYING PETITION FOR A WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion to transfer a case to the Family Division of the Eighth Judicial District Court and a district court order denying reconsideration. After several years of cohabitation, during which petitioner Catherine Trapasso and real party in interest Danny Schamma purchased and sold multiple homes together, Catherine and Danny ended their relationship. At that time, they owned a home together, so Danny filed an action in the district court seeking to quiet title or partition and apportion the property. Catherine filed a counterclaim seeking equal apportionment and alleged conversion of personal property. Catherine also sought to transfer the case to the Family Division of the

24-39221

district court. The district court judge denied that motion. Catherine then filed a new action in the Family Division alleging meretricious relationship-based claims. In the civil case, the Chief Judge denied Catherine's motion to reconsider the denial of her transfer request.

Catherine seeks extraordinary relief, asking this court to issue a writ of mandamus or prohibition compelling the district court to transfer the civil case to the Family Division. "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." *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also* NRS 34.160. A writ of prohibition is proper to "restrain a district judge from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991); *see also* NRS 34.320 (defining a writ of prohibition). Writ relief is generally not available, however, where the petitioner has "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170 (concerning writs of mandamus); *see also* NRS 34.330 (concerning writs of prohibition); *Smith*, 107 Nev. at 677, 818 P.2d at 851. "[T]he issuance of a writ of mandamus or prohibition is purely discretionary with this court." *Smith*, 107 Nev. at 677, 818 P.2d at 851. Petitioners carry the burden to demonstrate that extraordinary relief is warranted. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

"[T]he family court division has original and exclusive jurisdiction over matters affecting the familial unit including divorce, custody, marriage contracts, community and separate property, child support, parental rights, guardianship, and adoption." *Landreth v. Malik*,

127 Nev. 175, 184, 251 P.3d 163, 169 (2011) (citing NRS 3.223). Catherine relies on *Landreth* in arguing that all claims between unmarried cohabitants belong in family court because the specialized training family court judges receive means that only family court judges are suited to address the quasi-community property and alimony-like claims at issue in such cases. *See id.* at 185, 251 P.3d at 170 (discussing the additional training family court judges receive "to hear specialized matters of family law"). However, this is not what we concluded in *Landreth*. In *Landreth*, we considered whether a judge sitting in the family division had jurisdiction to decide property dispute claims between "an unmarried, childless couple[ ] who previously lived together." *Id.* at 177, 251 P.3d at 164-65. While acknowledging that the Family Division has "original and exclusive jurisdiction over matters affecting the familial unit" pursuant to NRS 3.223, *id.* at 184, 251 P.3d at 169, we held that "a family court judge [also] has the authority to preside over" claims between unmarried cohabitants, *id.* at 186, 251 P.3d at 170. We did not hold that the claims in *Landreth* could *only* be litigated in family court. Rather, we held that the family court *could* exercise jurisdiction over those claims even though they were improperly filed in the family division. *Id.*

Like the parties in *Landreth*, Danny and Catherine alleged property dispute claims arising out of their relationship as "an unmarried, childless couple[ ] who previously lived together." *Id.* at 177, 251 P.3d at 164-65. Because those claims did not involve a proceeding within the Family Division's exclusive jurisdiction pursuant to NRS 3.223, the district court correctly concluded it had jurisdiction to adjudicate Danny and Catherine's claims. And because Danny and Catherine did not have a current or previously decided case in the Family Division when Catherine

moved to transfer the case, we reject Catherine's claim that transfer was required. *See* NRS 3.025(3)(a) (requiring the Chief Judge to transfer a case to the Family Division which involves the same parties as any other pending or previously decided case assigned to the Family Division). Thus, Catherine has not met her burden to demonstrate that our extraordinary relief is warranted. *Pan*, 120 Nev. at 228, 88 P.3d at 844.

And even though the case that Catherine filed in the Family Division was pending when Catherine filed the motion to reconsider the district court's decision denying transfer, the Chief Judge properly denied that motion for two reasons. First, Catherine's motion was untimely. *See* EDCR 2.24(b) (requiring motions for reconsideration to be filed "within 14 days after service of written notice of the order"). Second, reconsideration was not warranted given that the district court denied the motion to transfer when there was no pending case involving these parties in the Family Division. *See Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) ("A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous."). And although Catherine's unilateral act of filing a second case in the Family Division could constitute new evidence, subject matter jurisdiction "cannot be conferred by the parties." *Landreth*, 127 Nev. at 179, 251 P.3d at 166.

Finally, we decline Catherine's request that we direct the district court to draft an ADKT proposing a local rule to bring motions before the Chief Judge. That request falls outside the scope of relief available through a petition for a writ of mandamus or prohibition. *See* NRS 34.160 (providing when issuance of a writ of mandamus is

appropriate); NRS 34.340 (providing the forms a writ of prohibition may take). Based upon the foregoing, we

ORDER the petition DENIED.[1]

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Danielle K. Pieper, District Judge
Hon. Jerry A. Wiese, Chief Judge, Eighth Judicial District Court
Willick Law Group
Hutchison & Steffen, LLC/Las Vegas
Hutchison & Steffen, LLC/Reno
Eighth District Court Clerk

[1]We have considered Catherine's other arguments and conclude that they do not warrant the relief requested.