

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KASEY LOOMIS,
Petitioner,

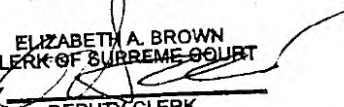
vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE AND THE HONORABLE
BRIDGET E. ROBB,
Respondents,
and
KIMBERLY LOOMIS,
Real Party in Interest.

No. 90274-COA

FILED

JUN 10 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

Kasey Loomis brings this original petition for a writ of mandamus challenging a temporary child custody order.

Kasey and real party in interest Kimberly Loomis were married in 2016 and share two minor children, C.L. (born October 2018) and Z.L. (born July 2021). In November 2024, Kimberly initiated a divorce action, seeking sole legal and “primary physical custody of the minor children with [Kasey] receiving supervised [parenting time].” Shortly thereafter, Kasey filed an answer, seeking joint legal and joint physical custody. A case management conference (CMC) was subsequently scheduled for February 6, 2025. The notice of CMC, which was prepared and signed only by

Kimberly's counsel and served on Kasey, stated that the district court would enter temporary orders regarding child custody at that hearing.¹

In his CMC statement, Kasey asserted there was no basis for Kimberly to be awarded sole legal and physical custody as both parties were capable parents and should enjoy joint physical custody. In Kimberly's CMC statement, she asserted the parties separated in October 2024 due to an incident that took place at the marital home where Kasey told Kimberly he wanted a divorce. Kimberly alleged that she later found out that Kasey removed and hid her firearm prior to informing her of wanting a divorce, and that Kasey had told the children that he was afraid of her and that "mommy was going to jail." Attached to Kimberly's CMC statement was an unsworn statement from Kasey's friend alleging that Kasey had informed him that Kasey had a plan to try and get Kimberly to shoot Kasey when he told her about the divorce.

Subsequently, the district court held the CMC, and the parties were sworn in. After discussing the parties' assets and the financial issues to be resolved in the litigation, the court proceeded to inquire as to the current custodial timeshare the parties were exercising. Kimberly's counsel asserted that, while the parties were exercising a 2-2-3 joint custody schedule, Kimberly had concerns about Kasey's mental health as expressed in her CMC.

Thereafter, the district court questioned Kasey about the circumstances surrounding him making the demand for a divorce, including

¹Based on the limited record before us, it does not appear that the district court entered an order scheduling a CMC pursuant to NRCP 16.2(j)(3). Nevertheless, the notice set the matter for a CMC, despite not being issued by the district court, and both parties treated the February 6, 2025, hearing as a CMC.

whether the conversation took place in front of the children. Kasey testified that this event occurred sometime in October, and he indicated that he did not remember whether the children were present. Nonetheless, Kasey testified he was fearful of the potential for a domestic situation to occur. When the court asked Kasey about what happened with Kimberly's firearm, he stated that he took her firearm because he was scared, noting that it had been sitting on a shelf unsecured. The district court proceeded to ask Kasey why one of the parties' children would have the belief that Kimberly was going to jail, and Kasey responded that he did not know and asserted that all he had done was communicate his fear of the situation. However, when questioned further on this point, Kasey acknowledged that he had told the children he was scared of Kimberly.

Following Kasey's testimony, the district court stated that it had concerns about Kasey's candor and credibility as well as his mental health. Given these concerns, the court ordered that the children reside only with Kimberly in the interim with Kasey having supervised parenting time. After making its oral ruling in this regard, the court inquired as to how much time the parties needed before scheduling a settlement conference. In response, Kasey's counsel indicated he needed six months, to which Kimberly's counsel did not object, and the court therefore set the matter for a settlement conference to be held in July 2025. However, the district court did not schedule an evidentiary hearing for temporary child custody or child custody mediation.

Thereafter, the district court entered an interim order after CMC providing that the parties would continue to share joint legal custody, but that Kimberly would be awarded "temporary primary physical custody of the children with [Kasey] having supervised parenting time at the

[Family] Peace Center.” The court’s order noted that it asked Kasey many direct questions and “found his responses to not be credible and/or indicative that [Kasey] has a mental health issue.” And [o]n this basis, the court awarded [Kimberly] temporary physical custody.” The court also noted that it “expects [Kasey] to obtain a mental health evaluation.” In a separate order, the court determined that Kasey shall have supervised parenting time with the parties’ children at the Family Peace Center with one visit per week and supervised video calls with the children one time per week. This original petition for mandamus relief followed.

In his petition, Kasey argues that the district court manifestly abused its discretion and violated his due process rights when it arbitrarily deprived him of meaningful contact with the minor children at the CMC when no motion to restrict his time with the children had been filed, and he was unaware that the court would be making such an order. Kasey also argues that the court abused its discretion by awarding Kimberly “sole physical custody” without making the requisite findings to support such an award and without considering a less restrictive alternative. Conversely, Kimberly asserts writ relief is not warranted as the court did not abuse its discretion or violate Kasey’s due process rights in entering its temporary custody order.

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. See NRS 34.160; *Int’l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Whether a petition for extraordinary writ relief will be entertained rests within this court’s sound discretion. *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 475, 168 P.3d 731, 737

(2007). The 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. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004).

This court reviews district court decisions concerning child custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). However, “deference is not owed to legal error, or to findings so conclusory they may mask legal error.” *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted). A district court abuses its discretion when it “improperly characteriz[es] its custodial award as primary physical custody when it [is] in actuality sole physical custody.” *Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 281 (Ct. App. 2023). “[S]ole physical custody is a custodial arrangement where the child resides with only one parent and the noncustodial parent’s parenting time is restricted to no significant in-person parenting time.” *Id.* at 287. “[A] sole physical custody order [results in] the severe restriction on the noncustodial parent’s care, custody, and control of their child [and] requires additional findings and procedure as compared to entry of a joint or primary physical custody order.” *Id.*

Having considered the petition, answer, reply, and appendices, we conclude that Kasey has met his burden of demonstrating that extraordinary writ relief is warranted. *See Pan*, 120 Nev. at 228, 88 P.3d at 844. Here, the challenged order restricted Kasey’s parenting time to one supervised visit at the Family Peace Center per week and supervised video calls with the minor children one time per week. While the district court characterized this order as granting Kimberly “temporary primary physical custody,” in actuality the temporary custody award was a de facto sole

physical custody order. Indeed, the temporary custody award directly corresponds with the definition of sole physical custody adopted in *Roe*, where we explained that such an order restricts the noncustodial parent's parenting time to no significant in-person time, including where the parent has only limited, supervised parenting time or phone calls with the child. 139 Nev., Adv. Op. 21, 535 P.3d at 287. And as we recognized in *Roe*, a district court abuses its discretion when it erroneously characterizes a sole physical custody award as primary physical custody. *Id.* at 281.

In addressing the temporary custody award, Kasey further argues that the district court made insufficient findings to support its decision to award temporary sole physical custody to Kimberly. In *Roe*, this court explained—albeit in the context of a final custody determination—that “a district court must only enter an order for sole physical custody if it first finds either that the noncustodial parent is unfit for the child to reside with, or if it makes specific findings and provides an adequate explanation as to the reasons why primary physical custody is not in the best interest of the child.” *Id.* at 288. These findings must be in writing and must be separate from the best interest findings. *Id.* The district court must “then order the least restrictive parenting time arrangement possible that is within the child's best interest.” *Id.*

We recognize that this case involves a temporary custody order, rather than the final custody determination at issue in *Roe*. And in the context of a temporary custody determination, where the court may be operating under exigent circumstances with only limited information available, it may not always be practicable for the district court to make all of the findings required to support a final sole physical custody order under our *Roe* decision. *Id.*; see also NRS 125C.0045(1)(a) (providing that a district

court may, during the pendency of the action “make such an order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest”).

But here, the district court’s findings in support of its temporary award of sole physical custody to Kimberly were extremely limited. The court simply stated that it found Kasey’s responses to its questions “to not be credible and/or indicative that [Kasey] has a mental health issue in addition to his admission that he told the minor children he was afraid of their mother.” However, the district court made no findings regarding Kasey’s fitness for having the children reside with him even for a very limited amount of time consistent with Kimberly receiving primary physical custody, or explaining how such a restrictive parenting timeshare consisting of only one visit of in person contact per week was in the children’s best interest. And there is nothing in the record to suggest the district court considered whether there were any less restrictive alternatives available than the arrangement adopted in the temporary custody order. Nor did it articulate specific safety concerns or emergency circumstances that would have necessitated such a significant restriction on Kasey’s parenting time. This is particularly troubling given that the parties had been purportedly exercising a joint physical custodial timeshare of the children since the divorce complaint was filed three months prior in November 2024, and the record does not reflect that Kimberly ever filed an emergency motion for temporary sole physical custody or otherwise asserted any specific safety or emergency issues with the parties’ post-filing exercise of joint physical custody.

Under these circumstances, we cannot conclude that the extremely limited findings made by the district court, which were based on

Kasey's brief testimony at a CMC upon questions from the court only, are sufficient to support the de facto award of temporary sole physical custody to Kimberly for an indefinite period of time. *See In re Temp. Custody of Five Minor Child.*, 105 Nev. 441, 443, 777 P.2d 901, 902 (1989) (recognizing that even temporary custody orders can "have far reaching consequences for both the parents and the children"). We therefore conclude our extraordinary intervention is appropriate to address the district court's manifest abuse of discretion in making the award of temporary sole physical custody under the circumstances of this case. *See State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (equating a "manifest abuse of discretion" with "[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule" (quoting *Steward v. McDonald*, 958 S.W.2d 297, 300 (1997) (alteration in original))). Accordingly, we grant the petition and direct the district court to revisit the issue of child custody in accordance with the guidance set forth in this order. *See In re Vernor*, 94 S.W.3d 201, 209-10 (Tex. App. 2002) ("[M]andamus is an appropriate remedy when a court abuses its discretion involving temporary orders in a suit affecting the parent-child relationship.").

This does not end our analysis, however, as Kasey further asserts that the district court was required to immediately schedule a trial to finally resolve the issue of child custody following its interim custody determination and that the court abused its discretion when it failed to do so. We agree.

Under SCR 251, matters affecting custody of minor children are to be resolved by the district court within six months of the date the issues are contested by a responsive pleading, unless the district court finds that unforeseeable circumstances preclude doing so and enters specific findings

of fact to justify an extension of time. Thus, in line with SCR 251, absent express findings justifying an extension of this period, district courts must promptly schedule an evidentiary hearing or trial on issues pertaining to child custody so that a temporary and final custody determination can be made. This is particularly imperative where, as here, a district court has entered a restrictive temporary custody order awarding one parent sole physical custody based only on limited information and testimony presented outside an evidentiary hearing or trial. *See In re Parental Rights as to A.G.*, 129 Nev. 125, 135, 295 P.3d 589, 595 (2013) (recognizing that “parents have a fundamental liberty interest in the care, custody, and control of their children”); *see also Arcella v. Arcella*, 133 Nev. 868, 872, 407 P.3d 341, 346 (2017) (acknowledging that the proper place to present evidence for a district court’s consideration and resolve disputed questions of fact is at an evidentiary hearing); *Roe*, 139 Nev., Adv. Op. 21, 535 P.3d at 283 n.6 (noting that the temporary custody orders in that case, which involved an award of sole physical custody, “were in effect for more than one year and contained very few findings, and none explained the lengthy delays”).

Here, the issue of child custody has been pending for more than six months from the filing of Kasey’s answer to Kimberly’s complaint and—based on the documents before us—the district court has seemingly not scheduled a trial to finally resolve child custody or made specific findings justifying the delay. Instead, it appears that the district court has only set this matter for a settlement conference taking place in July 2025, with no further proceedings on child custody currently scheduled nor a trial date. *See* NRCP 16.2(j)(3)(A)(i) (stating the court and the parties must confer at the CMC about the possibility for prompt settlement and the court may set the case for a settlement conference and/or trial).

Thus, absent this court's extraordinary intervention, it seems that Kasey's parenting time with his children will remain indefinitely restricted to only one supervised parenting time visit at the Family Peace Center and one supervised video call per week based only on the limited evidence and argument presented at the CMC. And while Kimberly asserts relief is not warranted as to this issue because it was Kasey who requested that the settlement conference be scheduled for July, we are not persuaded by this point as district courts have an independent obligation to resolve child custody issues within six months. *See* SCR 251 ("[T]he district courts *must* resolve the issues affecting the custody or visitation of the child or children within six months of the date that such issues are contested by the filing of a responsive pleading that contests the custody or visitation issues." (emphasis added)).

Under these circumstances, we conclude that the district court manifestly abused its discretion by failing to schedule an evidentiary hearing or trial when it entered the order awarding Kimberly temporary sole physical custody of the children. *Armstrong*, 127 Nev. at 932, 267 P.3d at 780. Accordingly, we also grant the petition as to this issue, and direct the district court to immediately set this matter for, and conduct, a trial to fully resolve the issue of child custody.²

²Should the district court determine that it is unable conduct a trial on an expedited basis, it must enter express findings explaining why unforeseeable circumstances preclude it from immediately scheduling and holding the trial, and then conduct an evidentiary hearing to determine temporary physical custody pending the trial. We express no opinion on whether the district court should or should not enter a sole physical custody order at any hearing or trial conducted pursuant to this writ.

Finally, Kasey asserts that the district court improperly required that he undergo a psychological evaluation without complying with the requirements set forth in NRCP 35 or NRCP 16.22. In this case, the district court's order is vague as to whether such an evaluation is actually required, as the court did not expressly direct Kasey to undergo such an evaluation. But to the extent the court intended to require a psychological evaluation, Kasey is correct that the court's decision in this regard failed to comply with the requirements of NRCP 16.22, which are substantially similar to those in NRCP 35, and are intended to be applied in custody matters.

As a result, we conclude our extraordinary intervention is warranted to the extent the district court ultimately intends to require Kasey to have a psychological evaluation prior to finally establishing child custody. Accordingly, we grant the petition as to this issue and direct that, if such an evaluation is to be required, any such directive must be accomplished by entering a new order expressly mandating such a psychological evaluation that fully complies with the requirements of NRCP 16.22, including describing the appropriate scope of the evaluation.

Therefore, the clerk of this court shall issue a writ of mandamus directing the district court to (1) revisit the temporary award of sole physical custody to Kimberly in accordance with the guidance set forth in this order,³ (2) immediately schedule this matter for a trial for the purposes of finally resolving the issue of child custody, and conduct an evidentiary hearing for

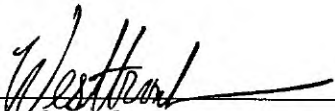
³Pending further proceedings on remand, we leave in place the current interim custody order. *See Davis*, 131 Nev. at 455, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand).

temporary custody if there will be any significant delay in conducting the trial for final custody, and (3) if the district court intends to require Kasey to undergo a psychological evaluation before finally resolving the issue of child custody, it must enter an order requiring such an examination that complies with the requirements of NRCP 16.22.

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Bridget E. Robb, District Judge, Family Division
Robison, Sharp, Sullivan & Brust
Law Offices of Andriea A. Aden, Esq., Chtd.
Washoe District Court Clerk