IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF HENDERSON, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; THE HENDERSON MUNICIPAL COURT; THE HONORABLE JUDGE ALICIA A. ALBRITTON; THE HONORABLE JUDGE RODNEY BURR; THE HONORABLE JUDGE JEREMY C. COOLEY AND MELISSA BENDER, CCE, ADMINISTRATOR OF THE HENDERSON MUNICIPAL COURT,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; THE HONORABLE DEDREE BUTLER, DISTRICT JUDGE, FAMILY COURT DIVISION AND THE HONORABLE AMY MASTIN, DISTRICT JUDGE, FAMILY COURT DIVISION,
Respondents,
and
JEREMY J. PREVOST AND SARA A. PREVOST,
Real Parties in Interest.

No. 89827

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR WRIT RELIEF

This is an original petition for a writ of mandamus and/or prohibition challenging a family court writ and related orders directing a

26-13774

municipal court to defer to the family court regarding enforcement of no-contact orders involving family court parties.

FACTS AND PROCEDURAL HISTORY

Jeremy and Sara Prevost were married in 2015 and had one child. In June 2019, Jeremy filed for divorce in the Eighth Judicial District Court, Family Division. In November 2019, the family court issued a stipulated divorce decree incorporating a Parenting Agreement detailing the joint custody arrangement between Jeremy and Sara and encouraging the two to "communicate directly with each other" as necessary to care for their daughter.

In October 2019, just before the stipulated divorce decree was issued, a criminal complaint was filed against Jeremy in the Henderson Municipal Court (HMC) charging him with misdemeanor battery constituting domestic violence under Henderson Municipal Code 8.02.055 for a 2018 incident involving Sara. Jeremy eventually pleaded nolo contendere, stipulated to the factual basis of the charges, and was adjudicated guilty by HMC. The sentencing order, issued in September 2022, imposed suspended jail time, community service, and domestic violence counseling, but there were no conditions addressing the level of contact permitted between Jeremy and Sara.

From the limited record before us, it appears that in 2021, while the misdemeanor domestic violence proceeding was ongoing, Jeremy and Sara briefly got back together. But in early October 2022, the family court issued a temporary protective order (TPO) against Jeremy at Sara's request. This TPO expired on November 7, 2022, and while the family court declined to extend the TPO, it did put in place a "mutual civil No-Contact

order" permitting Jeremy and Sara to communicate "only for issues involving the parties' minor child."

One month after the TPO expired, another criminal complaint was filed in HMC against Jeremy. This complaint alleged that Jeremy violated the October 2022 TPO before its expiration by contacting Sara and/or entering off-limits property. Again, Jeremy pleaded nolo contendere and stipulated to the factual basis of the charges. This time, in addition to 180 days of suspended jail time, the sentencing conditions included a no-contact order prohibiting Jeremy from contacting Sara except as permitted by the family court. HMC similarly updated its parallel sentencing conditions for Jeremy's domestic violence case to prohibit contact with Sara "except as ordered by family court re: minor child in common." Thus, as of February 2023, there were several concurrent no-contact orders from the two courts governing the couple's relationship, which both courts refined over time as disputes between Jeremy and Sara escalated. Each of HMC's orders either checked the relevant box indicating that it should be construed consistently with any family court orders or provided explicit instructions resembling those issued by the family court.

On November 16, 2023, HMC found that Jeremy violated its sentencing conditions and updated those conditions to require Jeremy to serve 30 of his 180 days of suspended jail time. According to the record before us, Sara took this opportunity to file an emergency motion for temporary sole custody of the couple's child with the family court. Sara's motion was granted. This prompted Jeremy to file a motion in family court asking to set aside the ex parte custody modification. In the same motion, Jeremy also asked the family court to issue a writ of mandamus and/or prohibition directing HMC not to interfere with the family court proceeding

and with Jeremy's efforts to regain custody. Notably, this relief was sought by motion to the family court adjudicating Jeremy's divorce proceeding, not by filing an independent petition for extraordinary writ relief. As a result, petitioners here were not parties to the case in which writ relief was sought.

The family court issued an order granting Jeremy's requests, followed by a "Writ of Mandamus and Prohibition" naming three HMC judges, as well as HMC's administrator, and directing them "to DEFER to the Eighth Judicial District Court, Family Division, in [Jeremy and Sara's family court case], for the issuance of a singular, unambiguous No Contact Order" controlling communication between the couple. It went on to declare that "[n]o other court (including [HMC]) shall issue, construe, interpret, or act upon the No Contact Order issued or any alleged violations thereto."

HMC filed a motion to intervene in the family court case for the limited purpose of contesting the family court's order and the writ issued against it pursuant to that order. The family court denied the motion to intervene and a related counterclaim to set aside or vacate the writ. It also expanded its restrictions by ordering that HMC was required to defer to the family court and "shall be precluded and restricted from issuing, construing, interpreting, or acting upon any No Contact Order or Conditions or upon any Temporary Protective Order issued or any alleged violations thereto, including, but not limited to [Jeremy's two misdemeanor cases] without consulting this Court." The family court later ordered that these restrictions "shall remain in effect as a permanent Order of the [Family] Court."

HMC, the municipal judges and administrator named by the family court, and the City of Henderson then filed this petition seeking writ relief to void the family court's writ and related orders and to prevent the

family court from taking future action to restrict HMC's authority to carry out its judicial responsibilities, either in regard to Jeremy's misdemeanor cases or any other proceeding.

DISCUSSION

The decision to issue a writ is within the sole discretion of this court. *Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Mandamus is appropriate to correct a manifest abuse of discretion and to promote sound judicial administration. *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981); *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. 492, 497, 306 P.3d 369, 373 (2013). "A manifest abuse of discretion is 'a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.'" *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (quoting *Steward v. McDonald*, 958 S.W.2d 297, 300 (Ark. 1997)). Prohibition, meanwhile, is proper "to restrain a district judge from exercising a judicial function without or in excess of its jurisdiction." *Smith*, 107 Nev. at 677, 818 P.2d at 851; NRS 34.320. For both mandamus and prohibition, this court generally only exercises its discretion to grant writ relief "where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330.

We exercise our discretion to entertain the petition in this case. HMC is not a party to the family court proceeding in which the writ and relevant orders were issued and its efforts to intervene in that proceeding were denied. It therefore cannot appeal and has no alternative remedy available other than to seek writ relief. *See, e.g., Watson Rounds v. Eighth Jud. Dist. Ct.*, 131 Nev. 783, 786-87, 358 P.3d 228, 231 (2015) (finding that a firm that was not a party to the underlying case and thus could not appeal

an adverse district court order was entitled to seek extraordinary writ relief); *Angell v. Eighth Jud. Dist. Ct.*, 108 Nev. 923, 926, 839 P.2d 1329, 1331 (1992) (deeming writ relief "the appropriate vehicle for challenging [district court] orders" that are not otherwise appealable). Although HMC's sentencing conditions have expired, this case still presents a live issue because the family court specified that its order requiring HMC to defer "shall remain in effect as a permanent Order of the [Family] Court."

District courts have authority to issue writs to municipal courts as inferior tribunals in an appropriate case. Nev. Const. Art. 6, § 6; NRS 34.160; NRS 34.330. But the family court improvidently chose to exercise that authority in this case by granting a procedurally invalid motion from Jeremy in the pending divorce action. Writ relief is an extraordinary remedy that invokes a court's original jurisdiction through a separate judicial proceeding, subject to distinct procedural requirements. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 229, 88 P.3d 840, 844 (2004); *see, e.g.*, NRAP 21(a) (establishing the procedure for pursuing writ relief in this court). When mandamus or prohibition are sought against an inferior court, that tribunal and/or its officer must be made a party to the proceeding. *See* 52 Am. Jur. 2d *Mandamus* § 339 (2021) ("[M]andamus does not lie to review a court's action where the court was not made a party to the proceedings or petition."); 63C Am. Jur. 2d *Prohibition* § 76 (2018) (discussing that the tribunal against whom prohibition is sought is a necessary respondent in that action). Although the Eighth Judicial District has not expressly prescribed procedure for seeking writ relief in that court, "the general and most approved practice in this country consists in the presentation to the court of an application in the form of a petition[or] complaint." Thomas Carl Spelling, *A Treatise on Injunctions and Other Extraordinary Remedies*

Covering Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari or Review § 1677, at 1443 (2d ed. 1901). This widely understood practice ensures that the intended subject of a writ is made party to and given a chance to participate in the writ proceedings, consistent with the statutory prerequisites for obtaining and enforcing an extraordinary writ. *See* NRS 34.190 (discussing "the *party* to whom [the writ] is directed") (emphasis added); NRS 34.340 (same); NRS 34.200 (discussing the participation of the "adverse party" in writ proceedings); *see also* Spelling, *supra* § 1653, at 1426 ("The prayer for [ ] mandamus . . . must designate the specific acts which [the petitioner] demands that the *respondent* shall do.") (emphasis added). Indeed, ensuring that the subject of the requested writ relief has an opportunity to be heard is not just good practice; it is also consistent with fundamental due process principles, with the NRCP, and ultimately with obtaining an enforceable order. *See* 52 Am. Jur. 2d *Mandamus* § 336 (2021) ("[T]he person or body whose duty it is to perform the act sought to be enforced by mandamus is a necessary and indispensable party to the mandamus action."); *Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 397-98, 594 P.2d 1159, 1164 (1979) (discussing the due process implications of failing to join an interested party to a proceeding by which they will be bound); NRS 34.300 (stating that writ proceedings are governed by "the provisions of NRS and Nevada Rules of Civil Procedure relative to civil actions in the district court"); NRCP 19 (stating the importance of adding necessary parties in the context of joinder). Moreover, all Nevada courts that have expressly addressed such proceedings specify that writ relief must be sought by filing a separate petition that names the subject of the requested relief as a respondent. *See, e.g.*, First District Court Rules (FDCR) 10.1 (stating that a party seeking writ relief "must file the petition

with the judicial clerk, and file, as soon as possible, proof of service of the petition on the respondent . . . "); NRAP 21(a)(1)-(2) (imposing the same requirements).

Here, Jeremy did not file a writ petition. Instead, he tacked his request for writ relief against HMC onto a motion challenging an order in an ongoing family court proceeding to which HMC was not a party. Based on this procedural failure, the family court should not have entertained Jeremy's request for extraordinary relief against HMC. *See Pan*, 120 Nev. at 228-29, 88 P.3d at 844 (noting that "[p]etitioners carry the burden of demonstrating that extraordinary relief is warranted" and that appellate courts "routinely receive and deny writ petitions that fail to comply with" relevant procedure) (citation modified). And in addition to being procedurally improper, Jeremy's efforts to obtain writ relief from the family court against HMC were inappropriate because he had an adequate remedy available to challenge the HMC proceedings—namely, appeal from the criminal proceeding to the district court—which he chose not to exercise. *Rawson v. Ninth Jud. Dist. Ct.*, 133 Nev. 309, 314, 396 P.3d 842, 846 (2017) (finding that the right to appeal is an adequate remedy and "a writ petition may not be used as a substitute to correct a party's failure to timely appeal"). If Jeremy believed HMC was misconstruing the family court TPO, the proper mechanism for raising that concern was an appeal.

Jeremy nevertheless seeks to justify the family court's actions with reference to NRS 4.370(1)(m), which provides that in certain circumstances, a district court may, by order addressed to a justice court, assume exclusive jurisdiction over an action for the issuance of a TPO. This argument does not withstand scrutiny. First, NRS 4.370 carves into the jurisdiction of justice courts, specifically, not municipal courts. We

acknowledge that the rules governing justice courts generally extend to municipal courts as well. *See* NRS 5.073(1) ("The municipal court must be treated and considered as a justice court whenever the proceedings thereof are called into question."); NRS 266.550 (giving municipal courts the same "powers and jurisdiction in the city as are now provided by law for justice courts"); *Sandstrom v. Second Jud. Dist. Ct.*, 121 Nev. 657, 661-62, 119 P.3d 1250, 1254 (2005) (recognizing that appeals from municipal courts are treated like appeals from justice courts). This is because the rules for justice courts have been fleshed out in greater detail than the rules for municipal courts, *see generally* NRS Title 6 (dedicated to justice courts and civil procedure therein); NRS Chapter 189 (providing rules for justice court criminal procedure and appeal), and may therefore serve as useful gap-fillers where there is silence as to municipal courts. But this general principle does not permit us to write municipal courts into statutes deliberately targeted at justice courts. *See, e.g.*, *Patterson v. Las Vegas Mun. Ct.*, 139 Nev. 318, 320-21, 535 P.3d 657, 660 (2023) (rejecting the argument that NRS 5.073 and NRS 266.550 require a statute "specifically limited to district courts and justice courts" to also apply to municipal courts because "the more specific statute . . . governs . . ."). NRS 4.370(1)(m) does not apply here because it limits the jurisdiction of justice courts, not municipal courts.

Second, NRS 4.370(1)(m) permits district courts to take over actions "for the *issuance* of" TPOs, not for their *enforcement*. NRS 4.370(1)(m) (emphasis added). Our caselaw explicitly rejects conflating the functions of district and justice courts (e.g., TPO issuance) with those of municipal courts (e.g., TPO enforcement). In *City of Las Vegas v. Las Vegas Municipal Court*, for example, we distinguished between issuing TPOs

versus enforcing violations of them and held that district and justice courts' power over the former did not strip municipal courts of their power over the latter. 110 Nev. 1021, 1023-24, 879 P.2d 739, 740-41 (1994) (rejecting the argument that district and justice courts can assume exclusive jurisdiction over TPOs where NRS 5.050 plainly grants municipal courts a role). So while NRS 4.370(1)(m) grants district courts certain authority with respect to TPOs, it has no effect on municipal courts' enforcement authority, which HMC validly exercised in this case.

In sum, Jeremy's pursuit of writ relief was procedurally invalid, and the family court exceeded its authority and abused its discretion by granting such relief against HMC in the context of Jeremy's motion. *Armstrong*, 127 Nev. at 931-32, 267 P.3d at 779-80 (writ relief may issue from an appellate court to control a district court's "manifest abuse of discretion," defined as "a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule") (citation omitted). By statute, HMC had jurisdiction over the misdemeanor proceedings against Jeremy, whose remedy lay by direct appeal to district court, not a petition for writ relief to the family court in the divorce case. *See, e.g.*, *City of Las Vegas*, 110 Nev. at 1024, 879 P.2d at 741 (upholding municipal court jurisdiction to adjudicate and enforce misdemeanor TPO violations and rejecting district court jurisdiction over the same); Spelling, *supra* § 1389, at 1200 ("[M]andamus is not a proper remedy to control or direct the decisions of inferior courts in matters wherein they have judicial cognizance and discretion.").

For these reasons, we grant HMC's petition insofar as it seeks to vacate the family court's improper writ and the related orders that perpetuate the writ's intrusion into HMC's authority over its criminal

misdemeanor judgments. *See Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011) ("[I]f the district court lacks subject matter jurisdiction, the judgment is rendered void."). The subject documents, chronologically, are: (1) "Order After Hearing of December 18, 2023," entered in Case No. D-19-591343-D on Jan. 9, 2024; (2) "Writ of Mandamus and Prohibition," entered in Case No. D-19-591343-D on Jan. 12, 2024; (3) "Order Re: Henderson Municipal Court's Motion to Intervene and Related Countermotion," entered in Case No. D-19-591343-D on June 28, 2024; (4) "Stipulation and Order Resolving All Pending Matters," entered in Case No. D-19-591343-D on Aug. 7, 2024; and (5) "Stipulation and Order Resolving All Pending Matters," entered in Case No. D-19-591343-D on Aug. 8, 2024. But because the family court wove its extra-jurisdictional mandates to HMC throughout several orders that primarily addressed the rights of Sara and Jeremy, we clarify that the writ relief we grant here does not interfere with the aspects of those orders directed at those parties *inter se*. And we deny the petition to the extent HMC seeks a writ arresting future proceedings in the family court case and prohibiting the family court from issuing similar writs in all future cases, as this would be both unnecessary in view of this decision and overbroad. *State v. Eighth Jud. Dist. Ct.*, 118 Nev. 140, 146-47, 42 P.3d 233, 237-38 (2002) (stressing that due to its extraordinary nature, writ relief, when granted, should be narrow).

Therefore, we

ORDER the petition GRANTED IN PART AND DENIED IN PART and direct the clerk of court to issue a writ vacating the contested writ and related orders issued by the Eighth Judicial District Court, Family Division to the extent that they require HMC to take or not take particular

action, including deferring to the family court, with respect to its enforcement authority over Jeremy's misdemeanor proceedings.

Pickering, J.
Pickering

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Amy Mastin, District Judge, Family Division
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