

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIMBERLY R. J., A/K/A KIMBERLY M.,  
NATURAL MOTHER IN THE MATTER  
OF E. M. AND J. M., CHILDREN  
UNDER 18 YEARS OF AGE,  
Petitioner,

vs.

THE THIRD JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF LYON,  
AND THE HONORABLE ARCHIE E.  
BLAKE, DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA  
DEPARTMENT OF HUMAN  
RESOURCES, DIVISION OF CHILD  
AND FAMILY SERVICES,  
Real Party in Interest.

No. 40176

FILED

SEP 12 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Schade*  
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION

This is an original petition for a writ of mandamus, or in the alternative, prohibition, seeking an order directing the district court to not proceed on a petition to terminate petitioner's parental rights.

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,<sup>1</sup> or to control an arbitrary or capricious exercise of discretion.<sup>2</sup> On

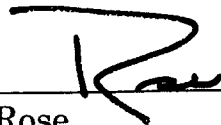
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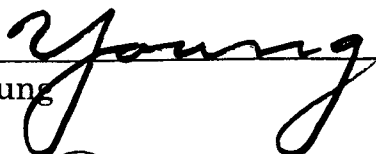
<sup>1</sup>NRS 34.160.


<sup>2</sup>Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

the other hand, a writ of prohibition is the proper remedy to restrain a district court from exercising a judicial function without or in excess of its jurisdiction.<sup>3</sup> In either case, the writ may be issued only where "there is not a plain, speedy and adequate remedy in the ordinary course of law."<sup>4</sup> An appeal is generally an adequate and speedy remedy that precludes relief.<sup>5</sup> Once the termination proceeding is resolved, petitioner may timely appeal if she is aggrieved.<sup>6</sup> We therefore deny the petition.<sup>7</sup>

It is so ORDERED.<sup>8</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

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<sup>3</sup>Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991); see also NRS 34.320.

<sup>4</sup>NRS 34.170; NRS 34.330.

<sup>5</sup>See Guerin v. Guerin, 114 Nev. 127, 953 P.2d 716 (1998) abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

<sup>6</sup>See NRAP 3A(a); NRAP 3A(b)(2); see also NRAP 4(a)(1).

<sup>7</sup>See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

<sup>8</sup>In light of this order, we deny petitioner's motion for stay as moot.

cc: Hon. Archie E. Blake, District Judge  
Lyon County Public Defender  
Attorney General/Carson City  
Lyon County Clerk