

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY MOSLEY,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
ROBERT E. ESTES, DISTRICT JUDGE,
Respondents,
and
DONALD MOSLEY,
Real Party in Interest.

No. 41522

FILED

JUL 02 2003

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

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of prohibition. A writ of prohibition is available to arrest proceedings that exceed the lower court's jurisdiction.¹ Petitions for extraordinary relief are addressed to this court's sound discretion.²

Under NRAP 21(a), petitioner has the burden of providing this court with a statement of facts necessary for this court's understanding of all issues raised and must also attach all documents needed for this court to render its decision. Petitioner alleges that Judge Robert Estes has engaged in improper judicial acts while presiding over the underlying child custody proceeding. A hearing was held before Judge Estes on May 28, 2003, and petitioner appears to challenge the ruling or statements made by the judge during the hearing. However, there is no written order stemming from the May hearing attached to the petition, nor is there a

¹NRS 34.320.

²Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

copy of the minutes or transcripts from the hearing for this court's review. To the extent petitioner seeks Judge Estes's removal from presiding over the district court proceedings, she may request his disqualification through a proper motion in the district court.³ When a disqualification motion is denied, a writ of mandamus is the appropriate means for challenging the denial.⁴

Additionally, petitioner seems concerned with the child custody arrangement, but she fails to specifically identify what the present custody arrangement is and why writ relief is warranted. If petitioner is ultimately aggrieved by the district court's custody determination, she can appeal.⁵ The right to appeal is generally an adequate remedy that precludes writ relief.⁶

³See NRS 1.230; NRS 1.235; NCJC 3(e); State ex rel. Dep't Welfare v. District Ct., 85 Nev. 642, 646 n.2, 462 P.2d 37, 39 n.2 (1969) (recognizing that should judicial prejudice develop during a proceeding, the aggrieved party may file a motion asserting actual bias and another judge will conduct a hearing on the motion).


⁴See City of Sparks v. District Court 112 Nev. 952, 954, 920 P.2d 1014, 1015-16 (1996) (holding that mandamus is properly used to challenge a district court order denying a recusal motion); cf. Cronin v. District Court, 105 Nev. 635, 639 n.4, 781 P.2d 1150, 1152 n.4 (1989) (noting that mandamus is properly used to challenge a district court order disqualifying counsel).


⁵See NRAP 3A(b)(2) (permitting an appeal from an order finally establishing or altering child custody); Burton v. Burton, 99 Nev. 698, 669 P.2d 703 (1983) (recognizing that an order denying a motion to modify a family court order, based on changed factual or legal circumstances, is appealable as a special order after final judgment).

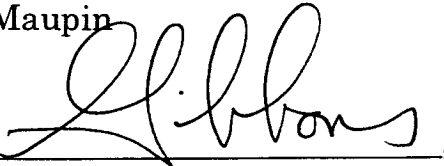
⁶See NRS 34.330; Guerin v. Guerin, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998), abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

Petitioner has failed to meet her burden under NRAP 21(a) and has not demonstrated that extraordinary relief is warranted at this time. Accordingly, we deny the petition.

It is so ORDERED.⁷


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Robert E. Estes, District Judge
Andrew S. Myers
Carl E. Lovell Jr.
Clark County Clerk

⁷In light of this order, we deny as moot petitioner's June 17, 2003 motion.