

IN THE SUPREME COURT OF THE STATE OF NEVADA

JODI ALLISON GROCHMAL,
Petitioner,
vs.
THE FIFTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF NYE,
AND THE HONORABLE JOHN P.
DAVIS, DISTRICT JUDGE,
Respondents,
and
CARL M. JOERGER, ESQ., AND DAVID
JONATHAN MORSE,
Real Parties in Interest.

No. 42615

FILED

MAR 24 2004

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

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This is an original petition for a writ of mandamus or prohibition directing the district court to refrain from any further action in the underlying child custody proceeding. Petitioner further seeks an order directing the return of the minor child to Texas, the award of temporary child custody, the appointment of a guardian ad litem for the child, reimbursement for expenses incurred, and for sanctions.

A writ of mandamus is available to compel the district court to perform a required act,¹ or to control an arbitrary or capricious exercise of discretion,² while a writ of prohibition is available to arrest proceedings

¹NRS 34.160.

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

that exceed the court's jurisdiction.³ Petitions for extraordinary relief are addressed to this court's sound discretion.⁴

Under NRAP 21(a), the 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 Jodi Allison Grochmal has failed to meet her burden. Based on the documents before this court, the procedural history in this matter is unclear.

Jodi and real party in interest David Jonathan Morse were never married. They have one child who is approximately ten years old. It appears that a child custody order may have been entered in Oklahoma, although no Oklahoma child custody order is attached to the petition. At some point, it appears that Jodi and the child moved to Texas, while David moved to Nevada. Later, the child moved to Nevada to live with David. The precise date of the child's relocation to Nevada is unknown.

On August 13, 2003, while the child was visiting Jodi in Texas, Jodi filed an emergency motion for child custody in the Texas court under the Uniform Child Custody Jurisdiction and Enforcement Act.⁵ Jodi alleged, without specifics, that the child was being abused while in David's care. At some point, David filed in the Nevada district court an ex parte motion for the immediate return of the child to his custody. On August 15, 2003, the Nevada court entered an order directing Jodi to return the child

³NRS 34.320.

⁴Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁵On October 1, 2003, Nevada adopted the Uniform Child Custody Jurisdiction and Enforcement Act. See NRS 125A.005.

to Nevada. The court determined that Nevada has jurisdiction to decide the custody issue because Nevada is the child's home state.⁶ The matter was set for an evidentiary hearing.

The documents before this court suggest that a hearing was conducted on December 16, 2003. If a hearing was conducted in December, it is unclear what resulted from the hearing. Although it does appear that the child has been returned to David's custody, we are unable to discern, without more detailed explanation and supportive documentation, what issues, in what context, have been presented or addressed in the district court. Additionally, while Jodi raises concerns with the child custody arrangement, she fails to specifically identify what the present custody arrangement is and why writ relief is warranted. If she is ultimately aggrieved by the district court's custody determination, she can appeal.⁷ The right to appeal is generally an adequate remedy that precludes writ relief.⁸

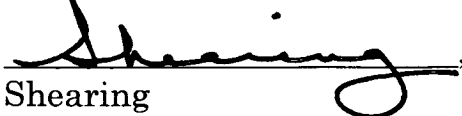
⁶See former NRS 125A.050.

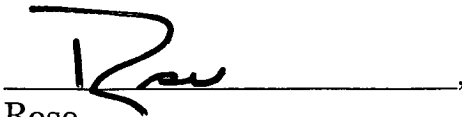
⁷See NRAP 3A(b)(2) (permitting an appeal from an order finally establishing or altering child custody); Burton v. Burton, 99 Nev. 698, 669 P.2d 703 (1983) (recognizing that an order denying a motion to modify a family court order, based on changed factual or legal circumstances, is appealable as a special order after final judgment).

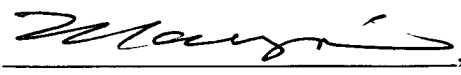
⁸See NRS 34.170; NRS 34.330; Guerin v. Guerin, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998), abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

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.⁹

It is so ORDERED.


_____, C.J.
Shearing


_____, J.
Rose


_____, J.
Maupin

cc: Hon. John P. Davis, District Judge
Carling & Whipple, LLC
Carl M. Joerger
Nye County Clerk

⁹See NRAP 21(b); Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).