

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA S. MYERS,
Petitioner,

vs.

CALEB O. HASKINS,
Respondent.

No. 57621

LISA S. MYERS,
Appellant,

vs.

CALEB O. HASKINS,
Respondent.

No. 58306

FILED

JUN 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRITS OF
MANDAMUS AND PROHIBITION AND DISMISSING APPEAL

Docket No. 57621 is an original proper person petition for writs of mandamus and prohibition arising from a child custody dispute. Docket No. 58306 is a proper person appeal from a district court order regarding temporary child custody and visitation and from the district court judge's refusal to disqualify herself. These matters have not been consolidated.

Docket No. 57621

In her mandamus request to this court, petitioner challenges the district court's oral rulings awarding the parties temporary joint legal and joint physical custody of the minor child and requiring petitioner to submit to a psychological evaluation. In seeking a writ of prohibition, petitioner asks this court to prohibit the district court from considering petitioner's other child custody matter pending in the district court in Case No. D260907 and to require district court judge Cheryl B. Moss to disqualify herself from hearing any other matters in the underlying case.

Mandamus is available to correct an arbitrary and capricious exercise of discretion when no plain, speedy, or adequate remedy at law exists. See NRS 34.170; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). It is within our discretion to determine if a writ petition will be considered. Smith, 107 Nev. at 677, 818 P.2d at 851. Petitioner bears the burden of demonstrating that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Having considered the petition and the attached documents, we are not persuaded that extraordinary relief is warranted. Smith, 107 Nev. at 677, 818 P.2d at 851. In particular, petitioner has not met her burden of demonstrating that writ relief is warranted because she failed to provide this court with a signed, written order that has been filed in the district court. See NRAP 21(a)(4); Pan, 120 Nev. at 228-29, 88 P.3d at 844. The district court minutes attached to petitioner's writ petition are of no effect. See State, Div. Child & Fam. Servs. v. Dist. Ct., 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004) (recognizing that a clerk's "minute order" or a district court's oral ruling is invalid for any purpose). Moreover, petitioner failed to provide this court with a copy of any of the motions, oppositions, or other documents that were filed by the parties in the district court and that concern the issues petitioner seeks to challenge in this writ petition. See Pan, 120 Nev. at 228-29, 88 P.3d at 844 (explaining that the petitioner bears the burden of demonstrating that extraordinary relief is warranted, which can be satisfied, in part, by providing the portions of the record that are essential to this court's

understanding of the matters raised in the writ petition). Accordingly, we deny the petition for writs of mandamus and prohibition.¹

Docket No. 58306

In this appeal, appellant seeks to challenge the district court's temporary award of joint legal and joint physical child custody and district court Judge Cheryl B. Moss's refusal to disqualify herself from the underlying proceedings.

Our review of the NRAP 3(g) documents transmitted to this court reveals jurisdictional defects. An appeal may be taken only when authorized by rule or statute. See NRAP 3A(b); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). Regarding the temporary award of joint legal and joint physical child custody, no statute or court rule authorizes an appeal from a temporary child custody or visitation order. See In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 901 (1989) (holding that no appeal may be taken from a temporary order that is subject to modification by the district court). Once the district court enters a written order finally resolving the child custody or visitation issues, any party that is aggrieved from the order may appeal. NRAP 3A(b)(7) (authorizing an appeal from an order finally establishing or altering custody of minor children).

Concerning district court Judge Moss's refusal to disqualify herself, we note that the challenged order is silent on this issue. To the extent that the order's silence can be construed as a denial of appellant's

¹We direct the clerk of this court to file petitioner's motion for injunctive relief, which was provisionally received on May 12, 2011. In light of this order, we deny as moot all motions currently pending in this petition.

motion to disqualify, see Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000), there is no statute or court rule authorizing an appeal from an order denying a motion to disqualify a judge. See NRAP 3A(b).

Accordingly, as we lack jurisdiction over this appeal, we order this appeal dismissed.²

It is so ORDERED.

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Hon. Bryce C. Duckworth, District Judge, Family Court Division
Lisa S. Myers
Roberts Stoffel Family Law Group
Eighth District Court Clerk

²We note that appellant's failure to serve respondent with a copy of her notice of appeal constitutes an independent basis for dismissing this appeal. See NRAP 25(b) (requiring all documents to be served on the opposing party, unless otherwise required by a specific rule).