

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASHOE COUNTY HUMAN
SERVICES AGENCY,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
PAIGE DOLLINGER, DISTRICT
JUDGE,

Respondents,

and,

HOPE R.; CHRISTOPHER R.; AND Z.
R., A MINOR CHILD,
Real Parties in Interest.

No. 83524

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ANSWER IN SUPPORT OF ISSUANCE OF REQUESTED WRIT

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I. ANSWER IN SUPPORT OF ISSUANCE OF REQUESTED WRIT

A. Introduction

Z.R., the minor child, was born on November 9, 2019. Petitioner's Appendix ("PA") 00. Washoe County Human Services Agency ("WCHSA") removed Z.R. from parental custody on or about November 12, 2019. PA 002, 006, 020-21. A *Guardian Ad Litem* for Z.R. has been appointed pursuant to 432B.500.¹

On April 14, 2021, WCHSA filed a Petition to Terminate Parental Rights pursuant to NRS 128 as to Hope R., Z.R.'s mother, and Christopher R., Z.R.'s legal father. PA 019.025.

On August 19, 2021, the parties appeared for a settlement conference in the termination of parental rights action. PA 032, 048. During the settlement conference, the juvenile district court ("juvenile court") *sua sponte* ordered WCHSA to facilitate increased visitation between Z.R. and her parents from one time per week to three times per week pending trial. PA 034-39, 049.

WCHSA, through counsel, objected to the juvenile court's *sua sponte* order, arguing that there is no statutory authority in NRS Chapter 128 that permits the juvenile court to enter an order regarding visitation, and visitation issues are more

¹ On November 1, 2021, in the underlying dependency case, JV19-01356, the court master appointed Colleen Yoder, Esq., with Nevada Legal Services, as the *Guardian Ad Litem* for the minor child, Z.R., pursuant to 432B.500.

appropriately addressed in the underlying dependency proceeding governed by NRS Chapter 432B. PA 037-38.

The juvenile court rejected WCHA's argument, reasoning:

So in terms of the Termination of Parental Rights Action, the Agency holds the lock and key to the parents' access to the child. One of the prongs of a termination of parental rights case is best interests. Parents are expected to present evidence at trial in order to begin to be able to rebut presumptions that it's in the child's best interests to terminate parental rights. That they have a relationship with the child. That they can parent the child and when they're only allowed access to their child at a frequency of one hour a week and especially in a case like this where again, not an issue of parents not taking advantage or availing themselves of the visitation that was offered by the Agency, that simply due to a pandemic situation which was outside of their control and then due to the fact that the plan changed to termination. They've got to be able to have increased access to [Z.R.] to be able to present evidence and testimony at trial. So I am going to issue that order. PA 038-39.

On August 25, 2021, the juvenile court filed its Order After Settlement Conference; Order Setting Mediation and an In-Person Trial; Scheduling Order ("Order"). PA 048-42. The Order states: "[The parents'] visitation with Zelda shall occur at a frequency of three times per week. WCHSA and its counsel, [the parents] and their counsel and the children's [sic] counsel shall meet as soon as practicable to set the new dates and times for visitation." PA 049.

On September 17, 2021, the Agency filed the instant Petition for Writ of Mandamus or Prohibition ("Petition") renewing its district court argument that the

juvenile court’s visitation order is not authorized under Chapter 128 but is more properly allowed by NRS 432B.550(3)(a). Petition at 5-8. On October 14, 2021, this Court filed an Order Directing Answer, which directed the Real Parties in Interest to “file and serve an answer...against issuance of the requested writ” as well as “address the propriety of writ relief, in addition to addressing the merits of the petition.”

B. Routing Statement

Real Party in Interest Z.R. agrees with WCHSA that the Nevada Supreme Court should keep and decide this writ petition under NRAP 17(a)(10) (specifically assigning cases “involving the termination of parental rights” to the Supreme Court).

II. LEGAL ARGUMENT

A. Propriety of Writ Relief

The relief sought in the Petition is appropriate here. A writ of mandamus is available when “the lower court has manifestly abused [its] discretion or acted arbitrarily or capriciously.” *Walker v. Second Judicial Dist. Court in & for County of Washoe*, 136 Nev. Adv. Op. 80, 476 P.3d 1194, 1197 (2020); *see also* NRS 34.160; *Humphries v. Eight Judicial Dist. Ct.*, 129 Nev. 788, 791, 312 P.3d 484, 486 (2013); *Int’l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Further, mandamus is available only where “the law is

overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.” *Walker*, 476 P.3d. at 1197 (*quoting State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011)(internal quotations omitted). A writ of prohibition is also available when a district court acts without or in excess of its jurisdiction. NRS 34.320; *Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012). As discussed more fully below, the juvenile court manifestly abused its discretion and exceeded its authority when it entered the visitation order which is the subject of the Petition.

B. Discussion

Real Party in Interest Z.R., through her counsel, hereby adopts and incorporates by reference WCHSA’s Legal Argument in subsection B of the Petition regarding the Order.

WCHSA asserts, namely, that the juvenile court abused its discretion when it *sua sponte* ordered visitation between the minor child and her parents pending the trial to terminate their parental rights, and that this order exceeds the scope of an action pursuant to NRS Chapter 128. Petition at 5. Further, WCHSA asserts that visitation orders are properly addressed in the underlying juvenile dependency proceeding governed by NRS Chapter 432B. Petition at 7-8.

Real Party in Interest Hope R. cites to *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015)(internal quotations and citations omitted) for the general proposition that “the district court has ‘broad discretionary power’ in determining child custody, including visitation.” In *Davis*, this Court reviewed the propriety of a child custody decree pursuant to NRS 125.480.² See generally *Davis*, 131 Nev. 445. Like NRS Chapter 432B, NRS Chapter 125C addresses visitation orders and modifications of visitation orders. See generally NRS Chapter 125C and NRS Chapter 432B. There are no such provisions in NRS Chapter 128 which address visitation orders or the modification of visitation orders.

The sole reference to visitation in NRS Chapter 128 is NRS 128.107(3)(b), which requires a court, in determining whether parental rights should be terminated, to consider “The maintenance of regular visitation or other contact with the child which was designed and carried out in a plan to reunite the child with the parent or parents.” Thus, the court is charged with reviewing the effort the parent or parents have made, including whether the parent or parents maintained regular visitation or other contact with the child, in determining whether to terminate parental rights. NRS 128.107(3)(b) does not permit the court in a

² NRS 125.450 to 125.520 were repealed by Section 19 of A.B. No. 263. Sections 3-12 of A.B. No. 263 added the aforementioned repealed provisions, with certain revisions, to chapter 125C of NRS, which concerns custody and visitation of children generally. 2015 Nevada Laws Ch. 445 (A.B. 263).

termination action to make orders regarding visitation between a child and her parent or parents.

Additionally, the permanency plan is no longer reunification; the plan was changed to termination of parental rights in the underlying dependency case in February of 2021. PA 015, 036. In entering its *sua sponte* order, the juvenile court essentially required WCHSA to re-institute reasonable efforts to preserve and reunify the family, which it had been relieved of on February 8, 2021 in the underlying dependency case, and gave the parents a path to create additional evidence for trial. *Id.*

Chapter 432B gives the court broad discretion in determining visitation between a child and her parents. *See* NRS 432B.550(3)(a), NRS 432B.560(1)(b)(2), NRS 432B.570(1), NRS 432B.570(2). A parent retains the right to reasonable visitation, unless restricted by the court. 432B.550(3)(a). If a parent believes that their right to reasonable visitation has been unjustly restricted, the parent may petition the court for enforcement of this right. *Id.* The court may also order a parent refrain from visiting the child if it is determined that visitation is not in the best interest of the child. NRS 432B.560(1)(b)(2). Further, Chapter 432B formalizes the process by which a parent may have a visitation order modified. A parent may file a motion for revocation or modification of an order issued pursuant to NRS 432B.550 or 432B.560. NRS 432B.570(1). Subsequently,

the court shall hold a hearing on the motion and may dismiss the motion or revoke or modify any order as it determines **is in the best interest of the child**. NRS 432B.570(2). There is no such process outlined in Chapter 128. *See generally* NRS Chapter 128.

The juvenile court, in entering its *sua sponte* order, deprived WCHSA and Z.R. of the ability to present evidence and argument against an increase in visitation at a hearing as required by NRS 432B.570(2). More importantly, in entering its *sua sponte* order, the juvenile court did not analyze whether or not this visitation order was in Z.R.'s best interests. *See* PA 036-039, 049. In fact, the juvenile court did not address Z.R.'s best interests whatsoever. *Id.* As a result, the juvenile court appeared to place the parents' interests above the interests of the child and created the appearance of advocacy on behalf of the parents.

A district court ordering visitation between a child and her parent(s), or any other party, must contemplate and analyze the best interest of the child in making its order. *Davis*, 131 Nev. 445, at 450-54; *see also Wallace v. Wallace* 112 Nev. 1015, 1019-20, 922 P.2d 541, 543-44 (1996). The juvenile court manifestly abused its discretion by entering its *sua sponte* visitation order without holding a hearing prior to entering the order, or at the very least, considering the best interests of Z.R. when determining whether to increase the visitation of her parents.

III. CONCLUSION

Z.R. respectfully requests that this Court grant the Petition as the juvenile court abused its discretion and exceed its authority when it *sua sponte* ordered WCHSA to increase visitation between Z.R. and her parents from one time per week to three times per week pending a trial in a termination of parental rights action pursuant to NRS Chapter 128. Additionally, Z.R. respectfully requests that this Court grant the Petition as the juvenile court acted arbitrarily and capriciously in ordering the increased visitation without contemplating and analyzing the best interest of Z.R. in making its order.

Dated this 10th day of November 2021.

By: Drew A. Bradley
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this answer complies with formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this answer has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

2. I further certify that this answer complies with the page- or type- volume limitations of NRAP 32(a)(7) because it is proportionally spaced, has a typeface of 14 points or more, is eight (8) pages, and contains a total of 1,858 words. NRAP 32(a)(7)(A)(i),(ii).

3. Finally, I hereby certify that I have read this answer, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this answer complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the answer regarding matters in the record be supported by a reference to the page of the transcript or appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 10th day of November 2021.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 10th day of November 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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