

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASHOE COUNTY HUMAN
SERVICES AGENCY,

Petitioner,

v.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, AND THE HONORABLE
PAIGE DOLLINGER,

Respondents, and

HOPE R., CHRISTOPHER R., and
Z.R., minor child,
Real Parties In Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 83524

MOTION FOR STAY

Comes now, Petitioner, Washoe County Human Services Agency (“WCHSA”), and seeks an order staying the August 25, 2021, visitation order, and the subsequent December 14, 2021, order regarding visitation pending resolution of this action. This Motion is based upon Rule 8 of the Nevada Rules of Appellate Procedure, the exhibits attached to the Petitioner’s Motion Appendix, and the following points and authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

On September 28, 2021, WCHSA filed the instant petition for writ of mandamus or prohibition, challenging the district court's August 25, 2021, *sua sponte* visitation order pending trial ("visitation order") in a termination of parental rights action regarding the Real Parties In Interest.

Pursuant to NRAP 8(a), WCHSA moved in the district court for a stay of the *sua sponte* visitation order pending the resolution of instant action, which the court denied. *Petitioner's Motion Appendix* ("PMA") at 0001-0005, 0085-92. The district court denied the request for a stay based on "the potential harm or hardship which will befall *the parents*" if the stay was granted. *PMA* at 0089 (emphasis added). In denying the motion, the district court faulted WCHSA for failing to provide pre-trial evidence of "the harm [Z.R.] is suffering due to increased visitation with her parents." *Id.* Finally, the district court found that WCHSA is unlikely to prevail on the merits of the writ petition. *Id.*

As a result of that motion, the district court decided for the first time to hold an evidentiary hearing regarding Z.R.'s best interests as it relates to visitation. *PMA* at 0090. On November 22, 2021, the hearing occurred. *PMA* at 0093-0204. On December 14, 2021, the district court entered an order regarding visitation, which

inter alia, reaffirmed the August 25, 2021, visitation order. *PMA* at 0205-0215.¹

The district court having denied WCHSA's request to stay the order, WCHSA now requests this Court issue an order staying the August 25, 2021, visitation order and the December 14, 2021, order regarding visitation pending resolution of this action.²

In deciding whether to issue a stay, the following factors are considered: 1) whether the child will suffer hardship or harm if the stay is granted or denied; 2) whether the nonmoving parties will suffer hardship or harm if the stay is granted; 3) whether movant is likely to prevail on the merits of the petition; and 4) whether there are other existing equitable considerations. NRAP 8(d).³ As termination of

¹ It should be noted that in the termination of parental rights action pursuant to NRS Chapter 128, the district court cited to NRS 432B.550(3)(a) to support its visitation order. *PMA* at 0212. While the district court states that the visitation is in Z.R.'s best interests, the court provides little to no analysis as to why. *PMA* at 0212-214. The main focus of the ruling is that Z.R. is not being physically harmed or displaying an outward adverse reaction. *PMA* at 0212-214. This does not necessarily equate to best interests.

² WCHSA did not seek a stay in the district court of the December 14, 2021, order regarding visitation. However, the December 14, 2021, order is merely an extension or affirmation of the previous August 25, 2021, visitation order. It is also abundantly clear from the order denying the motion for stay and the December 14, 2021, order regarding visitation, that doing so would be futile and unnecessarily delay relief from this Court. *See PMA* 0085-92; 0205-215.

³ It is unclear whether NRAP 8(c) or 8(d) applies to a request to stay an order arising out of a termination of parental rights action. The district court relied on NRAP 8(d) in its analysis, and the orders WCHSA seek to stay involve visitation

parental rights actions have the “dominant purpose of serving the best interests of the child,” the impact to Z.R. of granting or denying the stay should be given the most weight. NRS 128.005(2)(c); *see, e.g., Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004)(explaining that especially strong factors may offset other weak factors).

Here, a stay of the August 25, 2021, visitation order and the December 14, 2021, order regarding visitation is appropriate. Z.R. will suffer hardship or harm if the stay is denied. Conversely, Z.R. will *not* suffer harm or hardship if the stay is granted. Z.R. does not appear to have a bond with Hope R. and Christopher R. *PMA* at 0115. Claire McNamara, WCHSA mental health counselor, opined that exposing Z.R. to these visits can cause long-term harm as Z.R. does not have a secure attachment with Hope R. and Christopher R. *PMA* at 0155-156, 0175-176. Z.R. does not seek out Hope R. and Christopher R. for comfort, security or “delight in me” moments. *PMA* at 0137, 0152, 0156. Rather, Z.R. consistently looks to other adults present during the visits. *PMA* at 0114-115, 0135-136, 0156-157, 0187.

Z.R.’s lack of secure attachment is not due to the amount of time that she

between parents and a child. Therefore, for purposes of this motion, WCHSA cites to NRAP 8(d). WCHSA’s position regarding visitation and custody determinations in actions brought pursuant to NRS Chapter 128 remains as argued in the Petition and Reply.

spends with Hope R. and Christopher R. *PMA* at 0156. Rather, it is due to the quality of the visits and the missed opportunities by Hope R. and Christopher R. to meet Z.R.'s needs. *PMA* at 0156. Z.R. has been observed to form secure attachments with other adults in short periods of time. *PMA* at 0156-0157.

Z.R. "goes through the motions" during the visits, and she also displays anxiety and uncertainty. *PMA* at 0173-174, 0186, 0197. Z.R. enjoys playing with the toys and activities during the visits, but she is not actively engaging with Hope R. and Christopher R. *PMA* at 0114, 0115. Z.R. knows when visits are about to end, and she tends to end them early by cleaning up and waiting by the door. *PMA* at 0154, 0174-175, 0186.

Christopher R. and Hope R. will not suffer harm or hardship if the stay is granted. During their visits, Hope R. and Christopher R. often converse with each other and other adults present rather than engaging with Z.R. *PMA* at 0113, 0151-152. When not distracted by the cell phone or side conversations, Hope R. and Christopher R. participate in parallel play with Z.R. *PMA* at 0150, 0164, 0184-186. Hope R. also becomes overwhelmed and dysregulated, and Christopher R. focuses on regulating Hope R. rather than engaging with Z.R. *PMA* at 0149-152, 0183. It is not likely that their abilities or secure attachment with Z.R. will improve with more visits. *PMA* at 0125, 0163, 0175-176, 0178.

Finally, WCHSA believes it is likely to prevail on the merits of the writ

petition for the reasons set forth therein and in the reply in support of petition for writ of mandamus or prohibition.

Based on the foregoing, WCHSA respectfully requests this Court stay the August 25, 2021, visitation order and the December 14, 2021, order regarding visitation pending resolution of this action.

Dated: January 12, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on January 12, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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