

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.

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Elizabeth A. Brown  
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**OPPOSITION TO MOTION FOR STAY**

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## OPPOSITION TO MOTION FOR STAY

### Introduction

Petitioner, Washoe County Human Services Agency (Agency), has moved this Court for an order staying two family court visitation orders. The first visitation order the Agency seeks to stay was entered approximately six months ago on August 25, 2021, and remains in effect. The second visitation order was entered a month ago on December 14, 2021. Notably, the underlying writ proceeding involves only a review of the August 25, 2021 visitation order.

The Agency has not directly challenged the December 14, 2021 visitation order in this Court either on appeal or in a writ proceeding. It appears however, that under the guise of a motion for stay the Agency is actually seeking a merits ruling regarding the December 14, 2021 visitation order. That is, the Agency is seeking to have this Court substitute its opinion for that of the family court as to whether parent-child visitation should continue. At the same time, the Agency is now asking this Court to stay a visitation order that has been in effect and operational in the family court since August 25, 2021. This Court should deny the Agency's motion.

## ARGUMENT

### Background

The family court entered a visitation order on August 25, 2021, which is the subject matter of the underlying writ petition. Not until October 12, 2021, did the Agency seek in the family court to stay the August 25th visitation order. See Petitioner's Motion Appendix (PMA) at 1-5 (Motion for Stay). Real Party in Interest Hope R. opposed the motion on October 25, 2021, PMA at 17-44 (Opposition to Motion for Stay), and the Agency filed a reply on October 27, 2021. PMA at 45-51 (Reply in Support of Motion for Stay). A hearing was held on November 1, 2021, PMA at 52-84 (Transcript of Proceedings: Hearing). On November 19, 2021, the family court entered its order denying the Agency's motion for stay. The family court concluded that the Agency had "not cite[d] a single example of how this visitation is affecting [Z.R.] or provide affidavits or declarations as to the harm [Z.R.] is suffering due to increased visitation with her parents." PMA at 85-92 and 89 (Order Denying Motion to Stay The Visitation Order Entered August 25, 2021, and Setting Review Hearing). The Agency did not, and has not, challenged or sought review of this order.

Subsequently, on November 22, 2021, the family court held a review hearing. PMA at 93-204 (Transcript of Proceedings: Hearing). Thereafter, on December 14, 2021, the family court affirmed the visitation order currently in place. PMA at 205-15 (Order Regarding Visitation). Specifically, the family court “affirm[ed] its prior order that visitation between [Z.R.] and her parents, Hope [R.], and Christopher [R.], will occur three times a week.” *Id.* at 214. The Agency has not sought a stay of this visitation order in the family court. Instead, approximately a month since its entry the Agency now seeks a stay in this Court of an order not presently under review by this Court either on appeal or by writ proceeding.

### Discussion

*The Court should deny the Agency’s motion under NRAP 8*

Rule 8(a)(1)(A) of the Nevada Rules of Appellate Procedure (NRAP) ordinarily requires a party to “move first in the district court for the following relief: ... a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ[.]” See Hansen v. Eighth Judicial Dist. Court, 116 Nev. 650, 657, 6 P.3d

982, 986 (2000) (“[t]his court’s rules generally require a party to seek a stay in the district court before seeking a stay in this court.”). Here the Agency has not first moved in the family court for an order staying the December 14, 2021 visitation order. And as previously noted, the December 14, 2021 visitation order, or the developed record, is not presently under review by this Court.

Even assuming however that the matter was pending in this Court, NRAP 8(2)(A) requires a motion for stay sought in the Supreme Court in the first instance to “(i) show that moving first in the district court would be impracticable; or (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.” Rule 8(2)(A)(ii) is inapplicable here, but Rule 8(2)(A)(i) is. However, the Agency has not shown “that moving first in the district court would be impracticable” and this Court can deny the Agency’s motion for its failure to demonstrate impracticability. See Douglas v. Second Judicial Dist. Court, 452 P.3d 937, n. 1, 2019 WL 6543103 (unpublished Order Denying Petition For A Writ Of Mandamus) (stating that petitioner “failed to demonstrate that filing the motion for

stay in the district court in the first instance was impracticable, as petitioner had three weeks between the date of the district court's order and when he filed the emergency motion for stay in this court"); *TC Westshore, LLC v. Eighth Judicial Dist. Court*, 132 Nev. 1036, n. 1, 2016 WL 2985021 (unpublished Order Denying Petition) (noting that the motion "could be denied on the alternate basis that petitioner failed to first seek a stay in the district court" and petitioner "failed to demonstrate that first moving for a stay in the district court would have been impracticable"); and *Derricaotte v. Rangel*, 131 Nev. 1271, n. 1, 2015 WL 4999768 (unpublished Order Dismissing Appeal) (noting that "[t]he district court can resolve stay motions just as quickly as this court can"). The Agency has had the ability and ample time to seek a stay in the family court.

To overcome Rule 8(a)(2)(A)(i) the Agency asserts only that to first seek a stay in the family court "would be futile and unnecessarily delay relief from this Court." Motion for Stay (Motion) at 3, n. 2. The fact that the Agency has not been able to convince the family court of its objections on the merits of the visitation schedule is not a basis to seek an end-run around NRAP 8(a)(2)(A)(i). If that were the case, the

exception stated in Rule 8(a)(2)(A)(i) would swallow the general rule that requires a party to seek a stay in the district court before seeking a stay in the Supreme Court or Court of Appeals.

*The Court should not entertain a merits argument disguised as a motion for stay*

Just as the Agency cannot show impracticability, its claim for unfettered immediate relief is unjustified. In support of its motion for a stay under Rule 8(d), the Agency offers generalities and conjecture. See Motion at 4 (asserting that if a stay of the two visitation orders is not granted “Z.R. will suffer hardship or harm” and (tautologically) “Z.R. will not be harmed if the stay is granted.”); *Id.* (offering Agency’s counselor’s opinion that these visitations “can cause” harm); *Id.* at 5 (suggesting the parents will not be harmed by a stay because during visitation they “often converse with each other and other adults present rather than engaging with Z.R.”); *Id.* (stating that Hope R. can become “overwhelmed and dysregulated”). In the Agency’s view it is “not likely” that “secure attachments with Z.R. will improve with more visits.” On this basis the Agency believes it will likely prevail “on the merits of the writ petition” involving only the August 25, 2021 visitation order. *Id.* at 5-6.

In contrast, the family court specifically found, based on an evidentiary hearing, that the evidence presented showed “that overall the visits are positive, that [Z.R.] has not exhibited negative feelings, reactions[,] or behavioral changes as a result of the increase in visitation, and that [the parents] are not unsafe with [Z.R.] or uncaring toward her.” PMA at 212 (Order Regarding Visitation). The family court continued,

*[n]o testimony was presented that [Z.R.] is unhappy or frightened during the visits or that she appears to be suffering during visitation. No testimony was presented that the visitation has gotten worse since the increase in visitation; on the contrary, [Shauna Herrick, Family Support Worker with the University of Nevada for the Early Head Start program] testified that the visits have improved since August 2021. No testimony was presented that [the parents] have missed any of the approximately 39 visits that occurred since visitation has been increased to three times a week.*

*Id.* (italics added).

The Agency has not directly challenged this order or these findings before this Court and the Agency should not, under the guise of a motion for stay, indirectly obtain a stop to an existing and effective parent-child visitation order while its petition is pending.



## CONCLUSION

This Court should deny the Agency's motion for stay to the extent it seeks to stay the visitation order entered on December 14, 2021, either under Rule 8(a)(2)(A)(i) or because it seeks to obtain merit relief disguised as a stay of a visitation order. Likewise, this Court should deny the Agency's motion for stay to the extent that it seeks to stay a visitation order that has been in place since on August 25, 2021, and which is working.

In sum, the Agency has not put forward any genuine need for a stay; it simply dislikes the family court's orders. That is not a proper basis for a stay under NRAP 8.

Dated this 18th day of January 2022.

John Reese Petty  
JOHN REESE PETTY  
Chief Deputy Public Defender

Jennifer Rains  
JENNIFER RAINS  
Chief Deputy Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 18th day of January 2022. Electronic Service of the foregoing document is made in accordance with the Master Service List as follows:

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