

**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

**REPLY IN SUPPORT OF MOTION FOR STAY**

Comes now, Petitioner, Washoe County Human Services Agency (“WCHSA”), and replies in support of its Motion for Stay. This Reply is based upon Rule 8 of the Nevada Rules of Appellate Procedure, the Motion for Stay, the exhibits attached to the Petitioner’s Motion Appendix, and the following points and authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

WCHSA filed the instant petition for writ of mandamus or prohibition (“Petition”), 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. On January 12, 2022, WCHSA moved this Court for an order staying the August 25, 2021, visitation order, as well as the December 14, 2021, order regarding visitation, which affirmed the visitation order. *See Motion for Stay* (“Motion”).

Real Party in Interest Hope R. opposed the Motion, which Real Party in Interest Christopher R. joined. *See Opposition to Motion for Stay* (“Opposition”); *Joinder to Opposition to Motion for Stay*. WCHSA now replies to the issues raised in the Opposition and in support of its request for an order staying the August 25, 2021, visitation order and the December 14, 2021, order regarding visitation.

First, Hope R. and Christopher R. seemingly take issue with the timing of the instant motion. *See Opposition* at 2, 9. As highlighted by the lower court proceedings, family law matters are fluid and evolve as they impact the day-to-day lives of adults and, most importantly, children.

The issue presently before this Court is whether the district court has authority or jurisdiction to enter a visitation order in an NRS Chapter 128 action. *See Petition* at 1. Despite this legal issue, WCHSA complied with its court-imposed obligation to provide the visitation until WCHSA identified that the visits were no longer in the best interests of Z.R. *See Petitioner’s Motion Appendix* (“PMA”) at 001-003. At that time, WCHSA sought to stay the visitation order in the district court pending

resolution of the Petition because there is no statutory authority in NRS Chapter 128 to seek modification of a visitation order. *See PMA* at 001-003; *see also* NRS Chapter 128, *generally*. Similarly, WCHSA cannot properly address visitation in the NRS Chapter 432B case because of the *sua sponte* visitation order in the Chapter 128 action. *See Reply in Support of Petition for Writ of Mandamus or Prohibition* (“Reply”) at 11-12.

The nature of the lower court proceedings has become increasingly convoluted. WCHSA moved the district court to stay the visitation order while its Petition remains pending in this Court. *PMA* at 001-003. The district court denied the request for a stay and, as a result of the motion, decided to conduct a pre-trial evidentiary hearing regarding Z.R.’s best interests as it relates to visitation. *PMA* at 0072, 0090. Because there is no statutory authority to do so in NRS Chapter 128, WCHSA did not request the hearing. *See, generally*, NRS Chapter 128. However, the district court directed counsel for WCHSA to make the witnesses available and provide questioning on direct examination. *PMA* at 0080.

The evidentiary hearing occurred on November 22, 2021, and the district court took the matter under submission. *PMA* at 0093-0202. Approximately three weeks later, the district court entered the December 14, 2021, order regarding visitation, affirming the August 25, 2021, visitation order. *PMA* at 0205, 0214. Prior to December 14, 2021, WCHSA did not know if the visitation would remain as is or

be modified. WCHSA filed the instant motion as soon as practicable after receiving the December 14, 2021, order.

Hope R. and Christopher R. next argue that the Motion should be denied as WCHSA is required to seek a stay of the December 14, 2021, order in the district court. *Opposition* at 4-7. The December 14, 2021, order regarding visitation merely affirms the August 25, 2021, visitation order, which is the order WCHSA is currently challenging, and includes “best interests” findings notably absent from the August 25, 2021, visitation order. *PMA* at 0214 (“the Court affirms its prior order that visitation between [Z.R.], and her parents...will occur three times a week.”); *see also Opposition* at 4. It does not override or supersede the August 25, 2021, visitation order, which as indicated by Hope R. and Christopher R. is “in effect and operational.” *Opposition* at 2. Because the December 14, 2021, order affirms the “in effect and operational” August 25, 2021, visitation order, a stay of that visitation order would effectively stay the December 14, 2021, order.

Hope R. and Christopher R. further claim that WCHSA “seeks to obtain merit relief disguised as a stay of the visitation order.” *Opposition* at 9. Rule 8(d) of the Nevada Rules of Appellate Procedure, in part, requires the moving party to demonstrate hardship or harm to the child if the stay is granted or denied. As the moving party, WCHSA relies on the district court record, including sworn testimony, to do so. *Motion* at 4-5; *see also* NRAP 8(a)(2)(B)(ii), (iii).

Moreover, WCHSA’s argument is not based on “generalities and conjecture” or its “view.” *Opposition* at 7. Again, WCHSA relies on sworn testimony presented at the November 22, 2021, evidentiary hearing. *Motion* at 3-4; *see also* NRAP 8(a)(2)(B)(ii), (iii). The majority of the testimony relied on by WCHSA also serves as the district court’s findings of fact. *Compare Motion* at 4-5 with *PMA* at 0206-212; *see also* NRAP 8(a)(2)(B)(iii).

For the reasons set forth in the Motion and below, hardship or harm will *not* befall Z.R., Hope R. or Christopher R. if a stay is granted. *See Motion* at 4-5; *see also* NRAP 8(d). For the same reasons, hardship or harm will befall Z.R. if the stay is denied. *Id.*

For example, and as indicated in the Motion, Shauna Herrick, who is employed through the University of Nevada, Reno, testified that Z.R. “goes through motions;” that Z.R. knows when visits are about to end; that Z.R. looks to other adults present during the visits for security or comfort; that Hope R. becomes overwhelmed; and that Hope R. and Christopher R. engage in parallel play with Z.R. *See PMA* at 0183-187, 0197; *Motion* at 4-5. This is consistent with the other witnesses’ testimony. *Cf. PMA* at 0114-115, 0135-137, 0150, 0154, 0156-157, 0164. Ms. Herrick’s role is a “parent educator.” *PMA* 0180. Ms. Herrick testified that she was not qualified to give opinions regarding mental harm to a child. *See PMA* 0190.

Conversely, Claire McNamara, a mental health counselor, testified that Z.R. does not have a secure attachment with Hope R. and Christopher R., which has not improved with the visitation, and that Z.R. displays signs of anxiety and uncertainty. *PMA* at 0155-156, 0175-176. Ms. McNamara testified that the improvement in Z.R.’s uncertainty during transitions is because Z.R. knows that Ms. McNamara is present, Z.R. knows “what the visit will look like” and “that the visit will end after a certain amount of time.” *PMA* 0174.

Finally, WCHSA believes that it will likely prevail on the merits of the Petition for the reasons set forth therein and, in the Reply, not because of the testimony elicited at the November 22, 2021, hearing. *See Opposition* at 7. Specifically, there is no statutory authority in NRS Chapter 128 that allows a district court to enter affirmative custody and visitation orders in a Chapter 128 action. *Petition* at 6; *Reply* at 2-10.

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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 WCHSA's Petition.

Dated: January 25, 2022.

CHRISTOPHER J. HICKS  
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ATTORNEYS FOR PETITIONER

## **CERTIFICATE OF SERVICE**


I hereby certify that this document was filed electronically with the Nevada Supreme Court on January 25, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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John Petty, Esq., Washoe County Public Defender's Office

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