

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIMBERLY WHITE,

Petitioner,

vs.

THE HONORABLE VINCENT OCHOA,
DISTRICT JUDGE; AND THE EIGHTH
JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK,

Respondents,

and

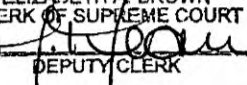
TAMIKA B. JONES; MARK
MCGANNON; AND CHRISTOPHER C.
JUDSON,

Real Parties in Interest.

No. 85678-COA

FILED

DEC 07 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

*ORDER DIRECTING SERVICE, DIRECTING LIMITED ANSWER,
GRANTING TEMPORARY STAY, AND DENYING IN PART PETITION
FOR WRIT OF MANDAMUS*

This emergency, pro se petition for a writ of mandamus challenges several district court orders and rulings in a child custody case. Petitioner, the children's paternal grandmother, raises safety concerns with real party in interest Tamika Jones' custody over the children and relocation to Michigan, especially given an 8-month continuance granted back in June before an evidentiary hearing is held. She also challenges the district court's refusal to consider her request for custody in the underlying case, in which she intervened, and its September 14, 2022, order conditionally requiring her participation in paternity testing.

Preliminarily, we note that petitioner did not serve the petition on real parties in interest, asserting that doing so would jeopardize the

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children's safety, the parents would not participate, and the issues raised concern only the court. This was improper. NRAP 21(a)(1) requires that the petition be served on all parties. *See also* NRAP 25(b) (requiring service of all papers on other parties to the case). Petitioner shall have 7 days from the date of this order to serve copies of (1) the petition, (2) the appendix, and (3) this order on real parties in interest and to provide this court with proof of service. Failure to properly serve real parties in interest and to provide timely proof of service to this court will result in the denial of this petition.

Further, having reviewed the petition, it appears that an answer may assist this court in resolving this matter only as to the challenged portion of the September 14 order providing that "should the Father not be located [for paternity testing], Grandmother/Intervenor may be tested." Therefore, real parties in interest shall have 21 days from the date that petitioner serves them with the petition, appendix, and this order to file and serve answers, including authorities, against issuance of the requested writ as to the paternity testing issue noted above. NRAP 21(b)(1). The portion of the September 14 order regarding paternity testing as quoted above is stayed, temporarily, pending receipt and consideration of any opposition to the stay, which opposition is due within 7 days of petitioner's service of the petition, appendix, and order on real parties in interest.

Finally, the petition is denied as to the remainder of the requested relief. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (providing that petitioner bears the burden of demonstrating that extraordinary relief is warranted); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (explaining that it is within this court's sole discretion to determine if a writ petition

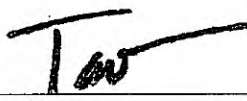
will be considered). At this point, it appears that all contested custody and visitation orders are temporary pending the upcoming evidentiary hearing on February 3, 2023, and that no final custody and visitation decision has been entered. While several factual contentions have been made, the district court, not this court, is the appropriate forum in which to decide those issues. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance."). It further appears that the district court took petitioner's concerns regarding safety of the children into consideration when temporarily allowing Jones to relocate with the children in light of real party in interest Christopher Judson's permission, which he placed on the record, determining that based on the information available, the relocation and continuation of the hearing did not implicate safety concerns.

As for petitioner's request for custody, typically, a nonparent who seeks custody of a child must file a complaint for custody with the district court. NRS 125C.004; *see also* NRS 125C.0035(3)(c). Here, while petitioner was allowed to intervene in the parents' custody case, the district court stated that she was allowed to do so for purposes of pursuing grandparent visitation, only. *See* NRS 125C.050. Petitioner has provided no documentation demonstrating otherwise and thus has failed to show that writ relief is warranted to require the district court to consider her custody request in the underlying case; as the district court provided, petitioner is free to file a separate complaint for custody. Accordingly, the upcoming evidentiary hearing should move forward, and except for the issue

concerning the conditional paternity testing, we decline to intervene on any of the other issues raised by petitioner at this time.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Vincent Ochoa, District Judge
Kimberly White
Eighth District Court Clerk