

IN THE SUPREME COURT OF THE STATE OF NEVADA

LORENE AMIRO-MESA,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
CHERYL MOSS, DISTRICT JUDGE,
FAMILY COURT DIVISION,

Respondents,

and

SHAHRAM HABIBIAN,
Real Party in Interest.

No. 43161

FILED

JUL 15 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order that scheduled a July 15, 2004 evidentiary hearing on real party in interest's NRCP 60(b)(3) motion to set aside as void an order terminating his parental rights.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station,¹ or to control an arbitrary or capricious exercise of discretion.² On the other hand, a writ of prohibition is the proper remedy to restrain a district court from exercising a judicial function without or in excess of its

¹NRS 34.160.

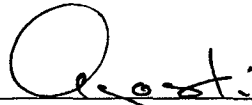
²Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

jurisdiction.³ In either case, the writ may be issued only where "there is not a plain, speedy and adequate remedy in the ordinary course of law."⁴ The issuance of either writ "is purely discretionary" with this court.⁵

We have considered the petition and answer, and conclude that extraordinary relief is not warranted. Accordingly, we

ORDER the petition DENIED.⁶


Becker, J.


Agosti, J.


Gibbons, J.

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Bruce I. Shapiro, Ltd.
Gayle F. Nathan
Clark County Clerk

³NRS 34.320; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁴NRS 34.170; NRS 34.330; see also Guerin v. Guerin, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998) (recognizing that an appeal is an adequate legal remedy), abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

⁵Smith, 107 Nev. at 677, 818 P.2d at 851.

⁶NRCP 21(b).