

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF J. H. AND S. H.,  
MINOR CHILDREN.

No. 51650

CRYSTAL H.,  
Petitioner,

vs.

THE SIXTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF HUMBOLDT, AND THE  
HONORABLE JOHN M. IROZ, DISTRICT  
JUDGE,

Respondents,

and

THE STATE OF NEVADA, DEPARTMENT  
OF HUMAN RESOURCES, DIVISION OF  
CHILD AND FAMILY SERVICES; ED  
SAMPSON, GUARDIAN AD LITEM;  
MATTHEW E. AND LINDA E.; AND  
DWIGHT B.,  
Real Parties in Interest.

**FILED**

MAR 05 2009  
TRACIE J. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order granting permanent physical custody of petitioner's minor children to the children's relatives.

This matter concerns the custody of petitioner's two minor children, J. H. and S. H. The district court has presided over issues concerning their custody for approximately three years, beginning with real party in interest Division of Child and Family Services' (DCFS) NRS Chapter 432B petition, filed in May 2005, alleging that J. H. was a child in need of protection. DCFS' petition was based on an allegation, admitted to by petitioner, that she was unable to provide J. H. with proper care, control, and supervision, as evidenced by petitioner's journal entry in which she threatened to fatally injure herself and J. H. After a hearing,

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the district court entered an order granting DCFS legal and physical custody of J. H.

The other minor child, S. H., was born in September 2006 and immediately placed into DCFS custody based on the earlier decision placing J. H. in protective custody. See NRS 432B.390(7); NRS 432B.330(2)(c). DCFS subsequently filed a petition alleging that S. H. was a child in need of protection. The DCFS petition noted, however, that S. H.'s placement in petitioner's home was "not contrary to [S. H.'s] welfare," given the importance for "a newborn to bond with its mother." Petitioner was consequently granted physical custody of S. H., although DCFS maintained legal custody over the child. Following petitioner's incarceration for a parole violation in 2007, however, DCFS was granted physical custody of S. H.

At various times throughout the district court's involvement with this case, the district court returned the children to petitioner's home based on her progress with respect to a reunification plan. But each time that the children were returned to petitioner, they were removed within a few months for petitioner's subsequent failure or inability to meet conditions of the children's placement with her.

After the most recent time the children were removed from petitioner's home, the court conducted hearings to determine the children's permanent placement. Pursuant to the hearings, the district court entered an order on March 5, 2008, in which it awarded permanent custody of J. H. to a paternal aunt and uncle and permanent custody of S. H. to the child's natural father. The court primarily based its placement decisions on its conclusion that, although petitioner had made significant progress over the three years during which it presided over the case, reunifying the children with petitioner was premature without a more

consistent demonstration of petitioner's long-term stability, since each time the court had reunified the children with petitioner, they subsequently had to be removed for their protection. The court concluded that the children's best interests were served by permanent placements. See NRS 432B.553 and NRS 432B.590 (evidencing legislative recognition that permanency in a child's placement is preferable). This original writ petition followed.

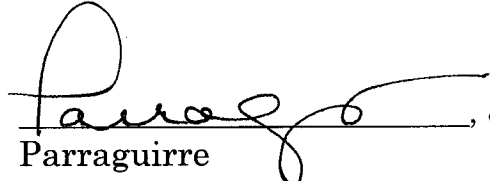
A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Mandamus is an extraordinary remedy, however, and the decision to entertain such a petition is addressed to our sole discretion. See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). Petitioner bears the burden to demonstrate that our extraordinary intervention is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

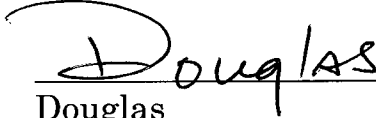
Having considered this writ petition, the answer thereto, and the parties' supporting documents, we are not persuaded that our intervention by way of extraordinary relief is warranted. Specifically, petitioner has not demonstrated that the district court manifestly abused its discretion when it determined that J. H. and S. H. were children in need of protection and that J. H.'s permanent placement with the paternal aunt and uncle and S. H.'s permanent placement with the natural father served the children's best interests. See Litz v. Bennum, 111 Nev. 35, 888 P.2d 438 (1995) (noting that custody determinations must be primarily based on the child's best interest); NRS 432B.550(b) (allowing the district court to place a child in the permanent custody of a suitable relative if the court determines that the child is in need of protection); NRS 432B.393(2)


(providing that a child's health and safety are the overarching concerns in determining whether reasonable efforts were made); NRS 432B.590(3)(b) (providing that the court must consider the child's best interest when considering a plan for the child's permanent placement).

Accordingly, we

ORDER the petition DENIED.<sup>1</sup>

 , J.  
Parraguirre

 , J.  
Douglas

 , J.  
Pickering

cc: Sixth Judicial District Court Dept. 2, District Judge  
Humboldt-Pershing County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Linda E.  
Matthew E.  
Humboldt County District Attorney  
Ed Sampson  
Michael L. Shurtz  
Michael Macdonald  
Humboldt County Clerk

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<sup>1</sup>Having considered all of the issues raised by petitioner, including her cursory arguments that the statutory scheme concerning children in need of protection is arbitrary and capricious and violates constitutional separation of powers and due process principles, we conclude that those arguments lack merit and thus do not warrant this court's intervention by way of extraordinary relief.