

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD ELRY MORRISON,
Petitioner,

vs.

CLERK OF THE COURT, FAMILY
COURT AND SERVICES DIVISION OF
THE EIGHTH JUDICIAL DISTRICT
COURT, IN AND FOR CLARK
COUNTY, NEVADA,
Respondent.

No. 52151

EDWARD ELRY MORRISON,
Appellant,

vs.

THE STATE OF NEVADA,
DEPARTMENT OF HUMAN
RESOURCES, WELFARE DIVISION,
AND STACY ANN RICH,
Respondents.

No. 52863

FILED

AUG 27 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Youney
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS (DOCKET
NO. 52151) AND REVERSING AND REMANDING (DOCKET NO. 52863)

Docket No. 52151 is an original proper person petition for a writ of mandamus to direct the district court clerk to file certain documents in the case that is the subject of the appeal in Docket No.

52863.¹ Docket No. 52863 is a proper person appeal from a district court judgment modifying child support. Eighth Judicial District Court, Family Court Division, Clark County; Gloria S. Sanchez, Judge.

This writ petition and appeal arise out of a paternity and child support case. Petitioner/appellant Edward Morrison argues that the district court failed to file and consider his motion pursuant to NRCP 60(b), which asserts that the case should be dismissed against him in its entirety based on the filing of a "Release of Judgment" by respondents.

Writ petition

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. NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Mandamus is an extraordinary remedy, and whether a petition will be considered is within our sole discretion. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

Morrison contends that mandamus is warranted to require the district court clerk to file his NRCP 60(b) motion. Our review of the relevant documents,² including the record on appeal, indicates that a

¹Petitioner filed a motion to proceed in forma pauperis. Good cause appearing, we hereby grant the motion and waive petitioner's filing fee. NRAP 21(e).

²Morrison submitted a motion to file supplemental exhibits to his writ petition. We grant the motion and direct the clerk of this court to file the supplemental exhibits provisionally received in this court on March 9, 2009.

version of Morrison's NRCP 60(b) motion was filed in the district court, but it does not appear that the district court considered Morrison's motion. We conclude that extraordinary writ relief is not warranted because a version of Morrison's motion was filed, and by Morrison's own admission, this version is identical to the version Morrison seeks to have filed as part of his writ petition. Accordingly, we deny the petition for a writ of mandamus in Docket No. 52151.³

While mandamus relief is not warranted at this time, we remind the district court clerk of his obligation to file documents properly submitted by proper person parties. The documents before us in this case and previous related matters demonstrate a clear lack of regard for the duty to file documents. We previously issued a writ of mandamus directing the clerk to file documents submitted by Morrison that the district court had failed to file. A review of the record shows that this previous document was never filed, nor was the second version of the document at issue in this writ petition filed. The district court clerk must carefully exercise his obligations to file documents properly submitted to him. Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995).

³To the extent the writ petition requests that this court order the district court to send Morrison certain documents he requested, it is unclear from the writ petition and other documents before us what Morrison has or has not received and the relevance of the documents he has not received to his ability to represent himself in the district court case. Accordingly, this alternative request does not provide a basis for extraordinary relief. On remand, Morrison can seek to obtain any relevant documents that he is properly entitled to receive.

Appeal

A district court's order modifying child support is reviewed for an abuse of discretion. Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996). An abuse of discretion is shown when the district court applies an incorrect legal standard. Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993).

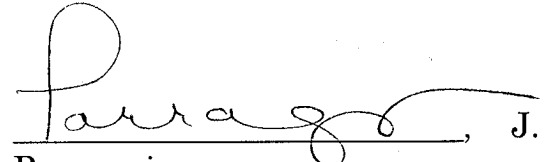
Although a version of Morrison's NRCP 60(b) motion was filed, it is unclear from the record whether the district court considered the motion or the "Release of Judgment" in connection with the district court's order modifying the child support obligation and determining arrearages. The failure of the district court to consider these filings would constitute an abuse of discretion. As it is unclear whether the district court considered these filings, we cannot determine whether the district court properly exercised its discretion in its modification order. Accordingly, we reverse the district court's order in Docket No. 52863 and remand the matter to the district court for the purpose of considering Morrison's motion and determining what effect, if any, the "Release of Judgment" should have on Morrison's obligations to each of the respondents.⁴ If,

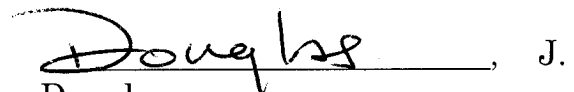
⁴We also note that the district attorney's motion to modify child support, filed on Morrison's behalf, requested that the district court make the modification effective April 1, 2008. But Morrison attempted to file his own motion to modify child support at a much earlier date, as evidenced by our previously issued writ of mandamus directing the filing of that document. See Morrison v. Eighth District Court Clerk, Docket No. 49756 (Order Granting Petition for Writ of Mandamus, February 14, 2008). Accordingly, on remand, depending on its determination of the effect of the

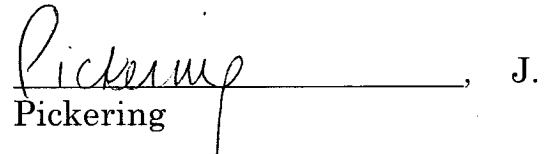
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however, the district court previously considered those filings, we remand to the district court to enter an order detailing its rulings in regard to those filings.

It is so ORDERED.⁵


Parraguirre, J.


Douglas, J.


Pickering, J.

... continued

“Release of Judgment,” the district court should determine the proper date on which the modified child support should be made effective based on a determination of when Morrison first properly sought the child support modification.

⁵Morrison’s motion to compel production of transcripts in Docket No. 52863 is denied, as no transcripts are available.

Morrison’s motion for a confession of error in Docket No. 52863 is denied. Respondents timely filed an answer as directed.

cc: Hon. Gloria S. Sanchez, District Judge, Family Court Division
Edward Elry Morrison
Clark County District Attorney David J. Roger
Clark County District Attorney David J. Roger/Family Support
Division
Attorney General Catherine Cortez Masto/Carson City
Jillian Prieto
Eighth District Court Clerk