IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW JOHN MCLAUGHLIN AND MARILYN ANN MCLAUGHLIN,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE N. ANTHONY DEL VECCHIO, DISTRICT JUDGE, FAMILY COURT DIVISION,
Respondents,
and
CHASTITY MCLAUGHLIN-PRIMMER,
Real Party in Interest.

No. 52202

FILED

SEP 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus seeks an order directing the district court to hear and resolve a motion for correction or clarification of a prior order.

On February 19, 2008, the district court entered an order in the underlying child custody matter, awarding primary physical custody of the minor child to real party in interest, the child's mother, and apparently awarding visitation rights to petitioners, the child's grandparents.[1] Then, according to the minutes of a February 26, 2008,

[1]Because this matter involves child custody and the petition does not clearly set forth the extent of the district court's custody ruling, which is necessary to fully understand petitioners' request for relief, we take judicial notice of the documents transmitted to this court pursuant to NRAP 3(e) in a related appeal, McLaughlin v. McLaughlin-Primmer, Docket No. 51733. See NRS 47.130; see also NRAP 21(a) (providing that

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08-22834

hearing, the district court orally clarified its visitation ruling and scheduled an evidentiary hearing to determine whether it would be in the child's best interest to continue the relationship with petitioners.[2] Thereafter, on March 13, 2008, petitioners appealed from the February 19 order determining primary physical custody and visitation.[3]

Several months later, on May 27, 2008, the district court entered a written order regarding the visitation schedule discussed at the February 26 hearing. Petitioners, claiming that the May 27 order did not reflect the court's oral pronouncement, moved the court to correct or clarify its order. According to petitioners, they were informed that due to the pending appeal, the district court would not consider their motion unless directed to do so in a writ from this court. Consequently, petitioners filed the instant petition for a writ of mandamus.

A petition for mandamus relief is addressed to this court's sole discretion.[4] Mandamus may compel the performance of an act that the

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. . . continued

petitioners must include with their petition all documentation necessary to this court's understanding of the matter).

[2]The minutes from the February 26 hearing suggest that the visitation rights set forth in the February 19 order were intended to be temporary, although the February 19 order itself does not so indicate.

[3]See McLaughlin v. McLaughlin-Primmer, Docket No. 51733.

[4]See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

law requires or control a manifest abuse of discretion,[5] but the writ is appropriate only when no adequate legal remedy is available.[6] In this instance, a different vehicle exists by which to obtain the requested relief, and therefore, mandamus is not an appropriate remedy.

On March 13, petitioners appealed from the district court's February 19 order, which appears to finally award custody and determine petitioners' visitation rights. A timely notice of appeal from an appealable order vests jurisdiction in this court and divests the district court of jurisdiction over the appealed order.[7] Accordingly, it appears that the district court's May 27 order clarifying those visitation rights is not valid, since the district court lacked jurisdiction to modify the February 19 order after the notice of appeal was filed.[8] Likewise, the district court is without jurisdiction to modify the visitation rights set forth in the February 19 order pursuant to petitioners' motion for correction or clarification of the May 27 order.

If the district court is inclined to clarify or modify visitation, the proper procedure to follow is set forth in our opinion in Huneycutt v. Huneycutt: the district court should certify to this court its inclination to grant clarification or modification, and then this court will consider any

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[5]See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

[6]NRS 34.170; Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

[7]Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987).

[8]Id.

request, made in the context of the appeal, to remand the matter to the district court for entry of an appropriate order.[9] Following entry of the written order, any party aggrieved thereby could file an amended notice of appeal from the new order.[10] Here, petitioners did not follow the Huneycutt procedure and the district court did not certify that it was inclined to clarify or modify visitation. Accordingly, we conclude that writ relief is not appropriate, and we

ORDER the petition DENIED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Hoskin Hughes & Pifer
Stephen M. Caruso
Eighth District Court Clerk

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[9]94 Nev. 79, 575 P.2d 585 (1978); see also Mack-Manley v. Manley, 122 Nev. 849, 138 P.3d 525 (2006); NRCP 60(a).

[10]See NRAP 4(a)(5).