

IN THE SUPREME COURT OF THE STATE OF NEVADA

NATASHA S.,  
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, DIVISION  
OF CHILD AND FAMILY SERVICES,  
Real Party in Interest.

No. 52470

**FILED**

OCT 28 2008

TRACE K. 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 temporary physical custody of petitioner's minor child to the maternal grandparents.

The minor child was placed into the custody of real party in interest, the Nevada Division of Child and Family Services (DCFS), in August 2007. Thereafter, in August 2008, DCFS filed a permanency review report with the district court, to which was attached a proposed case plan dated August 12, 2008, which provided concurrent goals of reunification with petitioner or permanent placement with a suitable relative. According to those documents, although petitioner had made positive steps toward reunification with the child, she had not been able to sustain suitable housing or employment, which, in addition to mental health issues, raised concerns over whether she would be able to protect and care for the child. Accordingly, DCFS recommended that the child be placed with her maternal grandparents, who live in Utah, have adopted a

sibling, and would pursue permanent guardianship. DCFS noted that placement with the grandparents would allow for a permanent and stable environment for the child while also permitting petitioner to continue to improve her parenting skills and seek reunification with the child in the future.

After the permanency hearing, on August 28, 2008, the court determined that returning the child to petitioner was inconsistent with the child's welfare and that it was in the child's best interest to be placed with the maternal grandparents. Accordingly, the court ordered the child's temporary placement with the maternal grandparents, in anticipation of the completion of a permanent guardianship. In so ordering, the court found that DCFS had made reasonable efforts to meet the case plan's permanency goals and to reunify petitioner with the child.

Petitioner then filed the instant petition for a writ of mandamus, seeking a writ directing DCFS to engage in reasonable efforts to reunify the child with petitioner pursuant to NRS 432B.393(1). Petitioner summarily contends that the child's placement with the maternal grandparents is inconsistent with continued reasonable efforts and that the child was improperly taken into custody in the first instance.

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.<sup>1</sup> Whether to consider a petition for such extraordinary relief is addressed to

---

<sup>1</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

our sole discretion,<sup>2</sup> and petitioner bears the burden of demonstrating that our intervention is warranted.<sup>3</sup>

The Nevada district court has exclusive original jurisdiction over proceedings concerning any child who is or may be in need of protection and “living or found within the county.”<sup>4</sup> If the court determines that the child is in need of protection, it may place the child in the temporary or permanent custody of a suitable relative.<sup>5</sup> Custody determinations must be primarily based on the child’s best interest.<sup>6</sup>

Under NRS 432B.393(1)(b), DCFS must make reasonable efforts to reunify the child with the parent. Nonetheless, because the child’s health and safety are the overarching concerns in determining the child’s placement, DCFS may concurrently work to place the child with a legal guardian.<sup>7</sup> The reasonable efforts must be maintained until the court determines that continued reasonable efforts are inconsistent with

---

<sup>2</sup>Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

<sup>3</sup>Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004); see also NRAP 21(a) (providing that a petition for extraordinary relief must, among other things, explain the facts necessary to provide an understanding of the issues presented and the reasons why the requested writ is warranted).

<sup>4</sup>NRS 432B.410(1); see also NRS 432B.330 (setting forth circumstances under which a child is or may be in need of protection).

<sup>5</sup>NRS 432B.550(1)(b).

<sup>6</sup>See Litz v. Bennum, 111 Nev. 35, 888 P.2d 438 (1995).

<sup>7</sup>NRS 432B.393(2); see also NRS 432B.553(1)(b) (providing that an agency must make reasonable efforts to finalize a child’s permanent placement).

the permanent placement plan, in which case DCFS must work to timely finalize the permanent placement of the child.<sup>8</sup> Also, under NRS 432B.393(3), DCFS is not required to make any reasonable efforts toward reunification if the court finds that certain conditions are met, such as the termination of parental rights with respect to a sibling.<sup>9</sup>

Within one year of the child's initial removal, the court must hold a hearing concerning the child's permanent placement.<sup>10</sup> At the hearing, the court must determine whether the agency has made reasonable efforts to reunify the child with the parent and whether and when it is in the best interest of the child to place the child with relatives and/or to initiate guardianship proceedings.<sup>11</sup> When the child's welfare requires placement with a nonparent, it is presumed that placement with a sibling is in the child's best interest, and preference must be given to a placement with relatives, even if the relatives live outside of Nevada.<sup>12</sup>

Having considered this petition in light of these standards, we conclude that our extraordinary intervention is not warranted. We note that the district court's order does not allow DCFS to discontinue making reasonable efforts toward reunification at this time, and the court did not render a final decision regarding the child's permanent placement. Accordingly, we

---

<sup>8</sup>NRS 432B.393(2).

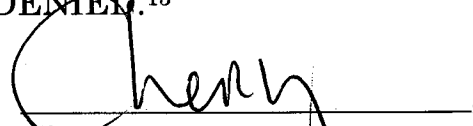
<sup>9</sup>NRS 432B.393(3)(c).

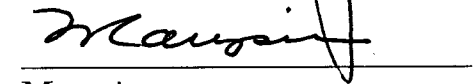
<sup>10</sup>NRS 432B.590(1)(a).

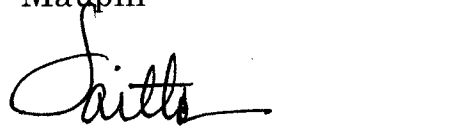
<sup>11</sup>NRS 432B.590(3).

<sup>12</sup>NRS 432B.550(5).

ORDER the petition DENIED.<sup>13</sup>

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. John M. Iroz, District Judge  
Humboldt County Public Defender  
Humboldt County District Attorney  
Michael Macdonald  
Humboldt County Clerk

---

<sup>13</sup>NRAP 21(b).