

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL FARNER,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
CYNTHIA DIANNE STEEL, DISTRICT
JUDGE,

Respondents,

and

RACHEL FARNER,
Real Party in Interest.

No. 76965-COA

FILED

JAN 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION*

This is an original petition for a writ of mandamus or prohibition challenging various decisions arising in a custody and divorce action.

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 or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of prohibition may be warranted when a district court acts without or in excess of its jurisdiction. NRS 34.320; *Club Vista Fin. Servs., L.L.C. v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012). This court has discretion as to whether to entertain a petition for extraordinary relief and will not do so when the petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170; NRS 34.330; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123

Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

As an initial matter, to the extent petitioner seeks to have the underlying family law matter reassigned to a different judge based on alleged bias and challenges practices and policies regarding the striking of filed exhibits employed in former Eighth Judicial District Court, Family Division, Judge Cynthia Dianne Steel's department, those issues are moot in light of Judge Steel's retirement from the Eighth Judicial District Court. Similarly, to the extent petitioner sought extraordinary writ relief to compel the district court to move forward with an October 2018 hearing on his motion regarding the sale of the marital home and changes to the children's school, that request likewise appears moot, as a review of the district court's online docket indicates that the October hearing did take place and that the district court subsequently entered a written order memorializing the rulings issued at that hearing.¹ As a result, these arguments do not provide a basis for our extraordinary intervention in the underlying matter. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (explaining that appellate courts decide actual controversies and do not render opinions on moot questions).

¹Because the issues set for consideration at the October 2018 hearing were closely related to certain of the issues presented in the instant petition, this court directed the parties to address the impact of the outcome of this hearing in filing an answer and any reply to the petition and to provide file-stamped copies of, among other things, any order stemming from the hearing. While an answer to the petition was not ultimately filed, we note that petitioner has not provided this court with a copy of the order stemming from that hearing or otherwise endeavored to inform this court as to what, if any, impact this order had on the issues presented in his petition.

We now turn to petitioner's challenge to the district court's decision to set the evidentiary hearing on custody issues for approximately one year after the hearing on his motion for temporary custody and support. While the court's decision in this regard is troubling as SCR 251 requires cases affecting custody of minor children to be resolved within six months of the date they are contested, despite his stated concerns about this delay in resolving the underlying issues, petitioner waited five months after this hearing date was determined to seek extraordinary writ relief even though he was aware that Judge Steel would be retiring at the end of 2018. Moreover, despite being represented by counsel at the hearing where this date was selected, petitioner did not object to the district court's selection of this date for the evidentiary hearing and the record does not indicate that he otherwise sought to advance this hearing date. Under these circumstances, we conclude petitioner has not demonstrated that extraordinary writ relief is warranted as to this issue.² *See Pan*, 120 Nev. at 228, 88 P.3d at 844.

To the extent petitioner challenges the temporary spousal and custody support awards entered by the district court, these issues were decided contemporaneously with the decision to set the underlying case for an evidentiary hearing in April 2019. But as with that decision, petitioner waited five months before bringing this issue before the appellate courts by way of the instant petition. Moreover, the challenge to the support issues is intertwined with petitioner's motion regarding the sale of the marital

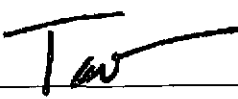
²Our denial of this petition does not preclude petitioner from moving for expedited resolution of the remaining custody and support issues, and to have these matters considered simultaneously with any remaining issues regarding the parties' divorce, in the district court.


home, which was heard in October 2018. Indeed this motion contained language suggesting petitioner was also seeking to have the district court revisit at least the spousal support award. And as noted above, petitioner has not provided this court with an update on the issues decided at this hearing and what, if any, impact any such decisions may have on his challenge to the temporary support awards. As a result, we conclude petitioner has not demonstrated that extraordinary writ relief is warranted as to these issues. *Id.*

Based on the forgoing analysis, and having reviewed the petition and appendix filed in this matter, we are not persuaded that this court's intervention by way of extraordinary relief is warranted. *Id.* Accordingly, we deny the petition. *See D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737.

It is so ORDERED.³


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

³In light of this order, real party in interest need not file an answer to the petition as previously directed by this court.

cc: Department G, Eighth Judicial District Court, Family Court Division
Hon. Linda Marie Bell, Chief Judge, Eighth Judicial District Court
Hon. Bryce Duckworth, Presiding Judge, Eighth Judicial District
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