

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

COURTNEY WHITE,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
CHARLES J. HOSKIN, DISTRICT
JUDGE,

Respondents,

and

MARK BROWN,
Real Party in Interest.

No. 79433-COA

FILED

SEP 24 2019

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This emergency, original petition for a writ of mandamus challenges a district court order staying the underlying child custody matter under the Servicemembers Civil Relief Act (SCRA),¹ *see* 50 U.S.C.A. § 3932 (2008). On August 21, 2019, we directed real party in interest to file an answer to the petition by September 4, 2019. Real party in interest was then granted a telephonic extension until September 18, 2019, but to date, he has not filed a response.

On April 26, 2019, petitioner filed a motion in the district court asking for primary physical custody of the parties' minor child, to be exercised in New York, or at least temporary custody of the child while real party in interest is deployed overseas in service of the U.S. Navy for

¹The district court's order refers to a former version of this Act, the Soldiers' and Sailors' Civil Relief Act of 1940, formerly codified at 50 U.S.C.A. §§ 501-596, which was substantially amended in 2003. *See In re Marriage of Herridge*, 279 P.3d 956, 960 n.8 (Wash. Ct. App. 2012).

approximately 13 months beginning on June 7, 2019. The day before real party in interest deployed, the district court entered an order, apparently sua sponte, stating that it was required to stay the case upon deployment under the SCRA and that there was insufficient time to schedule an evidentiary hearing between when the motion to modify was filed and real party in interest's deployment date. Petitioner's motion for reconsideration was denied later that month, and she now seeks extraordinary relief from this court, arguing that the district court erroneously stayed the case and should instead have granted her temporary custody of the child in New York while real party in interest is deployed.

Under the SCRA, child custody proceedings may be stayed by the court's own motion when one of the parties is a military servicemember and submits communications documenting the servicemember's inability to appear in the litigation due to service requirements. 50 U.S.C. § 3932(b). A stay is mandatory only when the servicemember asks for one and complies with the SCRA, showing that "current military duty requirements materially affect the servicemember's ability to appear." Real party in interest does not appear to have sought a stay of proceedings here.


Moreover, NRS 125C.0659 expressly acknowledges the district court's authority to issue temporary child custody orders upon a parent's deployment, unless otherwise prohibited by the SCRA. *Cf.* NRS 125C.0661 (providing for expedited hearings). Nothing in the SCRA necessarily limits the court's authority to issue temporary child custody orders, and temporary orders may be issued even when the underlying proceedings for permanent custody are stayed. *See, e.g., Ex parte K.N.L.*, 872 So. 2d 868, 871-72 (Ala. Civ. App. 2003) ("[W]e fail to see how the juvenile court's refusal to stay a pendente lite custody order could materially affect the

mother's ability to defend her interests at a final custody hearing after she returns from active duty.”): *Lenser v. McGowan*, 191 S.W.3d 506, 511 (Ark. 2004) (recognizing that the court could enter temporary custody orders even when an SCRA stay was in place); *In re Marriage of Grantham*, 698 N.W.2d 140, 145 (Iowa 2005) (holding that the district court could determine temporary child custody upon the primary custodial parent's deployment). Because the SCRA does not prohibit the district court from making a temporary custody decision under these circumstances, we conclude that the district court manifestly abused its discretion in staying proceedings on temporary custody, such that writ relief is warranted.² See NRS 34.160; *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 779-80 (2011) (explaining that mandamus may issue to control a manifest abuse of discretion). Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to expeditiously determine petitioner's motion for temporary custody.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Writ relief is warranted to the extent that the district court erroneously refused to consider petitioner's request for temporary custody during deployment. This court is not a fact-finding body, *Ryan's Express v. Amador Stage Lines*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012), and thus, we deny the petition insofar as it asks this court to issue a temporary custody order.

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Law Offices of Ernest A. Buche, Jr.
Mark Brown
Eighth District Court Clerk