

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HENRIETTA OSEI,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE LISA
M. BROWN, DISTRICT JUDGE,

Respondents,

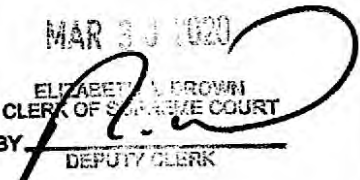
and

ALBERT OSEI,
Real Party in Interest.

No. 80425-COA

FILED

MAR 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER DENYING PETITION
FOR WRIT OF MANDAMUS AND/OR PROHIBITION*

This original petition for a writ of mandamus and/or prohibition challenges a temporary child custody order.

Petitioner Henrietta Osei seeks a writ of mandamus and/or prohibition directing the district court to vacate its temporary child custody order—which provided that the parties would have joint legal and joint physical custody of the child on a rotating monthly schedule—and enter a new temporary custody order. In her petition, Henrietta asserts that the district court failed to consider the best interest of the child in awarding the parties joint physical custody with a month on, month off schedule. Specifically, she contends that the district court failed to consider and address her allegations that real party in interest committed acts of domestic violence in front of the child, her assertion that she has been the child's primary caregiver since birth, and her position that a month on, month off custody schedule can be detrimental to a young child.

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). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). The decision as to whether a petition for extraordinary writ relief will be entertained rests within this court's sound discretion. See *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007).


This court previously entered an order directing real party in interest Albert Osei to file an answer against the issuance of Henrietta's requested writ. The order directed Albert's answer to be filed no later than March 5, 2020, and permitted Henrietta to file a reply brief no later than March 12, 2020. To date, no additional documents have been filed by either party. Ordinarily, this court could treat Albert's failure to file an answer as a confession that the petition is meritorious. Cf. NRAP 31(d)(2) (providing that the failure to file an answering brief may be treated as a confession of error).

But since the filing of this court's order directing an answer, it appears that a settlement conference in the underlying case has been scheduled for May 2020, and the trial in this matter is now set to commence in July 2020. Given this sequence of events, and in light of current

circumstances,¹ we decline to exercise our discretion to address the merits of this matter. *See D.R. Horton, Inc.*, 123 Nev. at 474-75, 168 P.3d at 736-37. Accordingly, we deny the petition. *See id.*; NRAP 21(b)(1). Nonetheless, our denial of this petition does not preclude petitioner from filing a new petition for extraordinary writ relief should the unique circumstances presented here change.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lisa M. Brown, District Judge, Family Court Division
McFarling Law Group
Warren G. Freeman
Eighth District Court Clerk

¹We take judicial notice of the Nevada Health Response COVID-19 Risk Mitigation Initiative issued on March 18, 2020, pursuant to Governor Sisolak's March 17, 2020, press conference and Declaration of Emergency, which recommends staying at home when possible to enforce social distancing guidelines in light of current health concerns. Additionally, we take judicial notice of Administrative Order 0008 filed on March 13, 2020, by Nevada Supreme Court Chief Justice Kristina Pickering, limiting public access to the appellate court facilities, and Administrative Order 20-01 signed by Chief District Court Judge Linda Marie Bell on March 13, 2020, limiting hearings in the Eighth Judicial District Court. *See* ADKT 0554.