

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. 81916-COA

FILED

JAN 08 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
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. Henrietta previously sought a writ of mandamus and/or prohibition challenging the same order, which this court denied on March 30, 2020. *See Osei v. Eighth Judicial Dist. Court*, Docket No. 80425-COA (Order Denying Petition for Writ of Mandamus and/or Prohibition, March 30, 2020). In that order, this court noted that a settlement conference and the trial were forthcoming, but also noted that petitioner was not precluded from filing a new petition should circumstances change.

In the instant petition, Henrietta asserts that the trial date has since been continued to May 2021 and reasserts 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. And she again contends that the district court failed to consider and address her allegations that real party in interest Albert Osei 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.

On November 10, 2020, this court entered an order directing Albert to file an answer and permitting Henrietta to file a reply. *See Osei v. Eighth Judicial Dist. Court*, Docket No. 81916-COA (Order Directing Answer, November 10, 2020). Albert filed his answer to the petition on December 14, 2020, along with an appendix that included the relevant transcripts of the proceedings. To date, no reply to Albert's answer has been filed.

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). 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, 475, 168 P.3d 731, 737 (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).

Having considered the documents before us, we are not persuaded that this court's intervention by way of extraordinary relief is warranted. *Id.* In particular, Albert's appendix indicates that, after this court entered its order directing an answer, Albert filed a motion for a pick-up order and an order to show cause in the district court, asserting that Henrietta failed to exchange the child for his parenting time. While we make no comment as to the merits of that motion, we note that in her opposition, Henrietta asserted that, at a subsequent hearing on February 6, 2020, the parties stipulated that Henrietta would have the child for a two month period, from February through April, and then the parties would continue with their month on/month off schedule. She also asserted that, following the February 6 hearing, the parties subsequently agreed that the child would remain in Georgia with Henrietta to minimize travel and exposure to the COVID-19 virus until the trial date. Henrietta further indicated below that, following their disagreement over whether custody exchanges should resume in light of the continued pandemic, the parties reached an agreement regarding future exchanges on a monthly basis, such that an order to show cause was not necessary. And as part of her opposition, Henrietta expressly requested that the district court affirm the parties' joint custody arrangement and the alternating monthly timeshare set forth in the order that she challenges in this petition. Under these circumstances, where Henrietta herself has now requested that the district

court affirm the temporary custody arrangement,<sup>1</sup> we conclude she has not demonstrated that our extraordinary intervention is warranted to challenge the original order imposing that arrangement. *See Pan*, 120 Nev. at 228, 88 P.3d at 844. Accordingly, we deny the petition. *See* NRAP 21(b)(1).

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Chief Judge, Eighth Judicial District Court  
Presiding Judge, Eighth Judicial District Court, Family Division  
Department T, Eighth Judicial District Court  
McFarling Law Group  
Donn W. Prokopius, Chtd.  
Warren G. Freeman  
Eighth District Court Clerk

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<sup>1</sup>We note that Henrietta's opposition was filed by new counsel below, but no motion to withdraw or notice of appearance has been filed with this court.