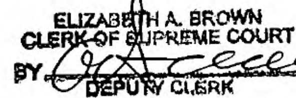
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MINH NGUYET LUONG, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE DAWN THRONE, DISTRICT JUDGE, Respondents, and JAMES W. VAHEY, Real Party in Interest.	No. 84743-COA FILED AUG 29 2022



ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR WRIT OF MANDAMUS AND DENYING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court's order denying petitioner's request to stay or reconsider an order temporarily modifying child custody.

Petitioner Minh Luong and real party in interest James Vahey (Jim) were divorced in 2021 and awarded joint legal and joint physical custody of their three minor children, sharing a week on/week off custody schedule. Although the final decree of divorce was not entered until April 2021, an initial custody determination was entered in 2019 and the parties have vigorously contested various child-related matters since, resulting in orders regarding school placement, therapy, the appointment of a guardian ad litem, and temporary changes to the custodial arrangement. As relevant here, after an evidentiary hearing in November 2021, the district court made several findings that Minh had alienated the children from Jim and that she indicated to the children that they should not like, trust, or respect

22-27042

Jim. After numerous status checks, in March 2022, the district court ordered Jim and the children to participate in Turning Points for Families, a program in New York providing intensive reunification therapy for parties experiencing severe parental alienation or an unreasonably disruptive parent-child relationship. Additionally, the district court awarded Jim temporary sole legal and sole physical custody of all three minor children, as recommended by the Turning Points program, for the four-day intensive therapy in New York and for a 90-day sequestration period following the time in New York. The district court set a status check for the end of May 2022 to assess the progress of the reunification therapy, noting that it intended to rescind the sequestration requirement as soon as it was recommended by the therapists involved in this case. Minh moved to reconsider the order directing the parties to participate in the Turning Points program and to stay that order, but the district court denied her motions, concluding that Jim and the children needed intensive reunification therapy because Minh's conduct was destroying the relationship between Jim and the children.

While Minh's motion for reconsideration and for a stay were pending, she filed a petition for writ of mandamus or prohibition, which this court denied in light of the fact that the Turning Points program in New York did not occur as intended and the parties were scheduled to attend the status check in May. *Luong v. Eighth Judicial Dist. Court*, No. 84522-COA, 2022 WL 1223228 (Nev. Ct. App. Apr. 25, 2022) (Order Denying Petition for Writ of Mandamus or Prohibition). The May status check was continued to June and Minh subsequently filed the instant petition for writ of mandamus or prohibition. Although Minh's appendix does not contain a written order

from the June status check, the parties agree that the district court set the matter for an evidentiary hearing to establish a final custody order.

In the instant petition, Minh seeks an order directing the district court to rescind its orders restricting the children from her, rescind its orders relating to the immersion therapy in New York, and to enforce the current custody order for joint physical custody. 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. 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., LLC 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).

First, as to Minh's challenge to the district court's order requiring the parties to participate in the Turning Points program, having considered the parties' briefs and supporting documentation, we are not persuaded that our extraordinary and discretionary intervention is warranted at this time. *See id.*; *see also D.R. Horton, Inc.*, 123 Nev. at 474-75, 168 P.3d at 736-37. Minh seeks to vacate the district court's order directing the children to participate in the immersion therapy in New York,

but as we concluded in our prior order denying writ relief, this court can grant no effective relief as the parties' limited participation in the program concluded, such that the petition is moot as to this issue. *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); *see also Langston v. State, Dep't of Motor Vehicles*, 110 Nev. 342, 344, 871 P.2d 362, 363 (1994).

As to Minh's request that this court direct the district court to rescind its orders prohibiting contact between Minh and the children, and to enforce the order awarding the parties joint physical custody, we likewise are not persuaded that our extraordinary and discretionary intervention is warranted at this time. *See D.R. Horton, Inc.*, 123 Nev. at 474-75, 168 P.3d at 736-37; *Pan*, 120 Nev. at 228, 88 P.3d at 844. Although the district court has broad discretion in making child custody determinations, we likewise recognize the importance of finality in such decisions to ensure stability for the children involved. *See Ellis v. Carucci*, 123 Nev. 145, 149-50, 161 P.3d 239, 241-42 (2007). And, as we did in our last order, we again note our concern that the district court has temporarily modified custody for such a long period of time, which has effectively deprived one parent of custodial time with the children for a significant period without an evidentiary hearing to establish a final custody order. *See id.*; *Rooney v. Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993) (holding that a district court must hold an evidentiary hearing when a party seeking to modify custody demonstrates adequate cause). But the district court has now set the matter for an evidentiary hearing and Minh has an adequate remedy in the form of an appeal after a final judgment is entered, should she be

aggrieved.[1] *Walker v. Second Judicial Dist. Court*, 136 Nev. 678, 681, 476 P.3d 1194, 1197 (2020) (explaining that an appeal from a final judgment is an adequate remedy and is preferrable to extraordinary writ relief).

Finally, Minh requests that this court direct the reassignment of this matter to another department, asserting that the district court here has prejudged the case and has predetermined the outcome, demonstrating that it has closed its mind to the evidence. We presume judges are unbiased. *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254, 148 P.3d 694, 701 (2006). And the standard for assessing bias is "whether a reasonable person, knowing all the facts, would harbor reasonable doubts about [a judge's] impartiality." *In re Varain*, 114 Nev. 1271, 1278, 969 P.2d 305, 310 (1998) (alteration in original). Generally, a judge's remarks "made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

Additionally, when evaluating a request to reassign a case on remand for reasons other than personal bias, the appellate courts should consider: "(1) whether the original judge would reasonably be expected upon

---

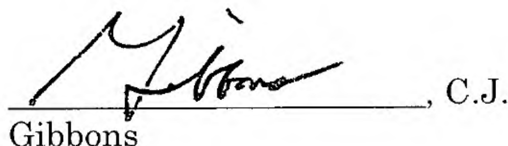
[1]Insofar as the district court previously declined to set an evidentiary hearing because the parties had purportedly not moved to modify custody, we remind the district court that it may modify a joint custody order upon motion by the parties *or upon its own motion*, if it's in the child's best interest. NRS 125C.0045(2); *see also* SCR 251 (district courts must resolve child custody or parenting time issues within six months of the issue(s) being contested, absent unforeseeable circumstances supported by specific findings justifying an extension). And if it appears that the child's best interest requires modification of the custody order, the district court *must* hold an evidentiary hearing. *See Rooney*, 109 Nev. at 542-43, 853 P.2d at 124-25.

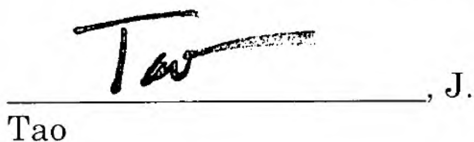
remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness." *California v. Montrose Chem. Corp.*, 104 F.3d 1507, 1521 (9th Cir. 1997); *see also Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, No. 84330, 2022 WL 1788220 (Nev. June 1, 2022) (Order Granting Petition) (applying the *Montrose* factors in concluding reassignment was warranted as part of further district court proceedings following the grant of a writ of mandamus).

Here, when discussing the length of the upcoming evidentiary hearing, Minh's counsel indicated that the case required longer than a single day for testimony as Minh intended to call at least two experts. In response, the district court stated that it did not need any expert testimony, or testimony from the therapists involved in the case. The court went on to state that the matter was going to come down to NRS 125C.0035(4)(c) ("Which parent was more likely to allow frequent associations and a continuing relationship between the children and the noncustodial parent."); that there was no way reunification could happen; that Minh does not support reunification, has not worked towards it, has not agreed to it, does not think it is necessary, and does not think that Jim is a necessary part of the children's lives; and that one of the parties is going to get sole legal and sole physical custody. These statements suggest that the district court has closed its mind to the neutral evaluation of the evidence and has pre-determined the outcome in this case. *See Cameron*, 114 Nev. at 1283, 968 P.2d at 1171.

Moreover, in light of the conclusory nature of the district court's comments, it cannot reasonably be expected that the district court will easily set aside its expressed opinions should Minh present evidence demonstrating the court's opinions are erroneous. *See Montrose*, 104 F.3d at 1521. Indeed, the district court indicated that it did not need expert evidence at all because it already determined what the result would be after the evidentiary hearing. Similarly, because the district court's statements indicate that it reached a conclusion prior to the evidentiary hearing, reassignment would preserve "the appearance of fairness." *Id.* And while reassignment might require some duplication in that there is a lengthy litigation history in this matter, this duplication is not out of proportion to the benefit of preserving the appearance of fairness. *See id.* Thus, because the foregoing comments and the history of this litigation create a reasonable doubt as to the district court's impartiality, reassignment is warranted to ensure the appearance of fairness in the proceedings below. *See id; In re Varain*, 114 Nev. at 1278, 969 P.2d at 310. Accordingly, we

ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to request that the Chief Judge of the Eighth Judicial District Court reassign this matter, Case No. D-18-581444-D, to a different department. We ORDER the petition DENIED in all other respects.


_______________, C.J.
Gibbons


_______________, J.
Tao

_______________, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Presiding Judge, Eighth Judicial District Court, Family Division
Hon. Dawn Throne, District Judge, Family Court Division
Willick Law Group
The Dickerson Karacsonyi Law Group
Eighth District Court Clerk