IN THE SUPREME COURT OF THE STATE OF NEVADA

WASHOE COUNTY HUMAN SERVICES AGENCY, Petitioner, vs. THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE; AND THE HONORABLE PAIGE DOLLINGER, DISTRICT JUDGE, Respondents, and LAYKA B.; MICHAEL B.; AND H.B., MINOR CHILD, Real Parties in Interest.	No. 84277
WASHOE COUNTY HUMAN SERVICES AGENCY, Petitioner, vs. THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE; AND THE HONORABLE PAIGE DOLLINGER, DISTRICT JUDGE, Respondents, and HOPE R.; CHRISTOPHER R.; AND Z.R., MINOR CHILD, Real Parties in Interest.	No. 84278

FILED

DEC 22 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITIONS FOR WRITS OF MANDAMUS OR PROHIBITION

These are consolidated original petitions for writs of mandamus or prohibition challenging district court orders finding portions of Nevada's statute setting presumptions favoring the termination of parental rights, NRS 128.109, to be unconstitutional.

Real parties in interest H.B. and Z.R. are minors that have been in the custody of petitioner Washoe County Human Services Agency

22-40276

(WCHSA) since 2019. WCHSA separately filed petitions to terminate the parental rights as to H.B. and Z.R. The parents opposed the petitions and filed motions challenging the constitutionality of NRS 128.109. Without deciding whether to terminate parental rights, the district court found that NRS 128.109(1)(a) and 128.109(2) violated the parents' due process rights. In these original petitions, WCHSA seeks a writ of mandamus or prohibition directing the district court to (1) vacate the orders finding NRS 128.109 unconstitutional and denying their motion for reconsideration and (2) enter an order regarding WCHSA's motion for reconsideration consistent with *In re J.D.N.*, 128 Nev. 462, 283 P.3d 842 (2012).

Prior to oral argument before this court, the underlying petitions in both cases were dismissed by the family court. Hope R., Z.R.'s mother, filed a motion to dismiss WCHSA's petition in case no. 84278 arguing (1) the petition was moot because the family court action from which it stems had been dismissed and thus no actual controversy existed and (2) the exception to mootness should not be invoked because WCHSA's separate writ petition in case no. 84277 raised the same issues and, thus, would not preclude WCHSA from seeking review. WCHSA opposed, arguing that, while the underlying action was dismissed, the exception to mootness applied because the matter is of widespread importance, capable of repetition, but may well otherwise evade review. This court denied Hope R.'s motion to dismiss "at th[at] time." Thereafter, Layka B., H.B.'s mother, although not moving for dismissal, filed a notice informing this court that the underlying petition in case no. 82477 had also been dismissed.

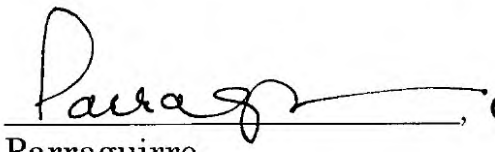
We therefore decline to entertain WCHSA's petitions as their claims are moot. Under Nevada law, "[a] moot case is one which seeks to determine an abstract question which does not rest upon existing facts or

rights." *NCAA v. Univ. of Nev., Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981). "The question of mootness is one of justiciability," and requires that this court only render judgments on actual controversies. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). Although controversies may exist at the beginning of a case, they may be rendered moot by subsequent events. *Id.* But cases involving moot controversies may still be considered by this court if they concern "a matter of widespread importance capable of repetition, yet evading review." *Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 328, 334, 302 P.3d 1108, 1113 (2013). "To satisfy the exception to the mootness doctrine, [petitioner] must show that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important." *Degraw v. Eighth Judicial Dist. Court*, 134 Nev. 330, 332, 419 P.3d 136, 139 (2018) (internal quotation marks omitted). The absence of these elements "would render any opinion advisory at best." *Id.* at 334, 419 P.3d at 140.

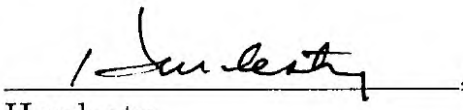
We conclude the petition is moot because the underlying petitions to terminate parental rights have both been dismissed. WCHSA argues that the exception to mootness should apply because it would be "a significant benefit to children in Nevada's foster care system by avoiding unnecessary delays in achieving permanency" and citing the "strong public policy interest" in doing so. While this speaks to the importance of the challenged action and the relatively short duration of the challenged action, we conclude WCHSA has not shown that there is a likelihood that a similar issue will arise in the future "where the result avoid[s] review or trial on the merits." *NCAA v. Univ. of Nev., Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981). While the instant decisions were not immediately appealable as no statute or court rule permits an interlocutory appeal of a pre-trial order

regarding the constitutionality of a statute in a termination of parental rights action, *see* NRAP 3A(b), a final order in any case would ultimately become appealable, by either side, once the district court entered a final judgment on a motion to terminate parental rights. NRAP 3A(b)(1). As such, the issue clearly has a path to gaining appellate review. Thus, WCHSA has not met the standard for demonstrating it is capable of repetition but evading review. Therefore, WCHSA's petition is denied.

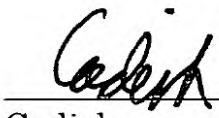
It is so ORDERED.[1]



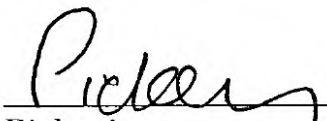
_____, C.J.
Parraguirre



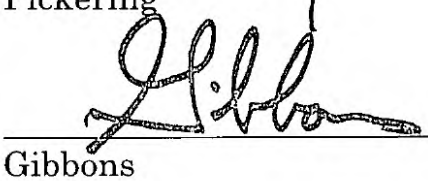
_____, J.
Hardesty



_____, J.
Cadish



_____, J.
Pickering



_____, Sr. J.
Gibbons

HERNDON, J., with whom, STIGLICH, J., agrees, dissenting:

I agree with the majority that this matter is moot but would entertain the petitions because the exception to the mootness doctrine is

---

[1]The Honorable Mark Gibbons, Senior Justice, participated in the decision in this matter under a general order of assignment.

met. *See DeGraw*, 134 Nev. at 332, 419 P.3d at 139. First, "the duration of the challenged action is relatively short" because the presumption applies against a parent if a child has resided in protective custody for fourteen months within a twenty-month period, NRS 128.109(1)(a) & (2), and courts are generally required to complete proceedings terminating parental rights within six months of filing. NRS 128.055. Further, this issue is likely to arise in the future, as district courts are required to consider NRS 128.109 as part of any proceeding terminating parental rights where the child has been placed in protective services pursuant to NRS 432B. *See* NRS 128.109. Additionally, as evidenced here, the ruling on the constitutionality of NRS 128.109 was a catalyst that led to both cases being resolved short of final judgment, rendering the issue one that is capable of repetition while evading review. Finally, as the majority acknowledges, this issue is important. *See In re Parental Rights as to A.G.*, 129 Nev. 125, 135, 295 P.3d 589, 595 (2013) ("[P]arents have a fundamental liberty interest in the care, custody, and control of their children."). Thus, I would hold that, while this issue is moot, it also meets the exception to the mootness doctrine and I would address the merits of the petitions.

_____, J.
Herndon

I concur:

_____, J.
Stiglich

cc: Hon. Paige Dollinger, District Judge, Family Court Division
Washoe County District Attorney
Washoe County Alternate Public Defender
Northern Nevada Legal Aid/Reno
Washoe County Public Defender
Washoe District Court Clerk