


IN THE SUPREME COURT OF THE STATE OF NEVADA

MARGARITA E. ROSIAK,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
MICHELE MERCER, DISTRICT  
JUDGE,  
Respondents,  
and  
RICHARD J. ROSIAK,  
Real Party in Interest.

No. 86994

FILED

NOV 17 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER GRANTING PETITION FOR A WRIT OF PROHIBITION*

This original petition for a writ of prohibition challenges a district court order regarding the parties' property rights while an appeal is pending.

In the parties' divorce action, the district court entered a final order distributing the parties' property in September 2022. Specifically, the district court awarded petitioner Margarita Rosiak the parties' Ford Explorer and California property located on Willey Burke Avenue. Also in September 2022, real party in interest Richard Rosiak appealed from that order, contesting the district court's distribution of the parties' property and specifically challenging the award of the Willey Burke property to Margarita. During the pendency of that appeal, on May 18, 2023, the district court granted Richard's motion to keep the status quo regarding the parties' property and directed that the Ford Explorer be returned to Richard and that Margarita pay Richard \$2,488.23 monthly in rent for the Willey Burke property. Margarita filed this writ petition challenging the district

court's jurisdiction to enter the May 18 order, which she alleges modified her property rights while those property rights were subject to a pending appeal. In Richard's response, he does not contest that the district court lacked jurisdiction to enter the order.

Having considered the petition, answer, reply, and supporting documents, we conclude that writ relief is warranted because the district court exceeded its jurisdiction when it entered the May 18 order. *See* NRS 34.320 (providing that a writ of prohibition is available to arrest or remedy district court actions taken without or in excess of jurisdiction); *Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012) ("A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the jurisdiction of the district court."). A timely notice of appeal generally "divests the district court of jurisdiction to act and vests jurisdiction in this court." *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006). A district court will only retain jurisdiction "on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal's merits." *Id.* at 855, 138 P.3d at 530. Both parties agree that their property rights are the subject of the pending appeal and any modification of those property rights would not be collateral to or independent from the appealed order. Additionally, both parties acknowledge that the May 18 order modified Margarita's property rights that are the subject of the pending appeal. Thus, the district court exceeded its jurisdiction by entering the May 18 order. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION instructing the

