

IN THE SUPREME COURT OF THE STATE OF NEVADA

DESIREE LUCIDO,
Petitioner,
vs.
EIGHTH JUDICIAL DISTRICT COURT,
Respondent.

No. 87286

FILED

FEB 16 2024

ORDER DENYING PETITION

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This pro se original petition for a writ of mandamus or prohibition challenges a district court order declaring petitioner a vexatious litigant.

We elect to entertain the merits of Desiree Lucido's writ petition because she does not otherwise have an adequate legal remedy. *See Peck v. Crouser*, 129 Nev. 120, 124, 295 P.3d 586, 588 (2013) (observing that a writ petition is the proper means of challenging a vexatious litigant order). Having done so, however, we are not persuaded that she is entitled to a writ of mandamus.¹ *See Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) ("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."); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the party seeking writ relief bears the burden of showing such relief is warranted).

¹Nor is Lucido entitled to a writ of prohibition because it is not reasonably disputed that the respondent district court had jurisdiction over the underlying matter. *See Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev. 643, 649, 331 P.3d 905, 909 (2014) (recognizing that a writ of prohibition is appropriate when a district court exceeds its jurisdiction).

Lucido first contends that she was deprived of due process when the respondent district court declared her a vexatious litigant because the district court did not first hold a hearing. However, Lucido was afforded the opportunity to file a written opposition to the guardian's motion to declare her a vexatious litigant, and due process does not necessarily require the district court to hold a hearing. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (“[P]rocedural due process requires notice and an opportunity to be heard.” (internal quotation marks omitted)); *Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 60, 110 P.3d 30, 42-43 (2005) (observing that the opportunity to oppose the issuance of a vexatious litigant order “protects the litigant’s due process rights”); *cf.* EDCR 2.23(c) (authorizing the district court to resolve a motion without holding a hearing).

Lucido next contends that the imposition of the vexatious litigant order violates her First Amendment right to free speech. However, it is well-recognized that “baseless litigation is not immunized by the First Amendment.” *Wolfe v. George*, 486 F.3d 1120, 1125 (9th Cir. 2007); *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1298 (11th Cir. 2002) (“A vexatious litigant does not have a First Amendment right to abuse official processes with baseless filings in order to harass someone to the point of distraction or capitulation.”). In this, we note that the district court’s order permits Lucido to submit filings so long as the district court first reviews them to ensure that they have arguable merit and are not intended to harass the guardian. *See Filipas v. Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987) (observing that such a procedure complies with the First Amendment).

Lucido finally contends that the district court’s vexatious-litigant order violates the Protected Person’s Bill of Rights, *see* NRS

159.327-.329. According to Lucido, the district court's order violates NRS 159.328(d), which provides that

each protected person has the right to . . . [h]ave a family member, an interested party, a person of natural affection, an advocate for the protected person or a medical provider speak or raise any issues of concern on behalf of the protected person during a court hearing, either orally or in writing, *including, without limitation, issues relating to a conflict with a guardian.*

Emphases added.


Lucido reads the "without limitation" language to mean that she is statutorily entitled to raise any issue whatsoever in the guardianship proceeding, even if it is frivolous. We disagree. *See Williams v. United Parcel Servs.*, 129 Nev. 386, 391, 302 P.3d 1144, 1147 (2013) (reviewing de novo issues of statutory construction). When read in context, the phrase "including, without limitation, issues relating to a conflict with a guardian," means that a family member of a protected person can raise issues relating to a conflict with the guardian, as well as other issues. In no way does this give a family member the right to raise frivolous issues without consequence. This reading is supported by NRS 159.0486, which is in the same chapter as the Protected Person's Bill of Rights, and which expressly authorizes the district court to declare someone a vexatious litigant if that person "[h]as previously filed pleadings in a guardianship proceeding that were without merit or intended to harass or annoy the guardian."² NRS


²Lucido contends that one of her pleadings was meritorious and that the district court erroneously declared her a vexatious litigant based on that pleading. But even assuming that pleading was meritorious, the district court's order lists an array of other pleadings that it found to be frivolous or intended to harass the guardian.

159.0486(1)(b). We are unwilling to construe NRS 159.328(d)'s use of the phrase "without limitation" as rendering meaningless the district court's statutory authority to declare Lucido a vexatious litigant under NRS 159.0486. *Cf. Matter of B.J.W.-A.*, 139 Nev., Adv. Op. 1, 522 P.3d 814, 816 (2023) ("Where possible, we interpret statutes within a common scheme harmoniously with each other and in accordance with those statutes' general purpose."); *Orion Portfolio Servs. 2, LLC v. County of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010) ("This court has a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized. In addition, the court will not render any part of the statute meaningless" (citations omitted)).

Consistent with the foregoing, we
ORDER the petition DENIED.³


_____, C.J.
Cadish


_____, J.
Herndon


_____, J.
Bell

cc: Hon. Linda Marquis, District Judge, Family Division
Desiree Lucido
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

³To the extent Lucido challenges the district court's award of attorney fees and costs as a sanction, we are not persuaded that writ relief is warranted in that respect.