

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: A.ST.A.

No. 87760

AUNDREA G.,  
Petitioner,

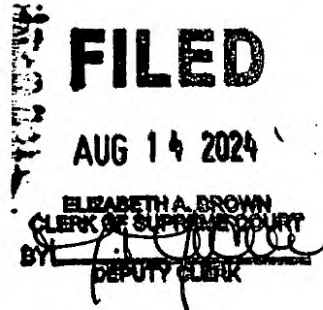
vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
CYNTHIA N. GIULIANI, DISTRICT  
JUDGE,

Respondents,

and

A.ST.A., A MINOR; NATURAL  
PARENTS, LOUIS S.A. AND TAMARA  
G.-S.A.; AND CLARK COUNTY  
DEPARTMENT OF FAMILY  
SERVICES,  
Real Parties in Interest.



*ORDER DENYING PETITION FOR A WRIT OF MANDAMUS*

This original petition for a writ of mandamus challenges a placement decision in an NRS Chapter 432B matter. Real party in interest Clark County Department of Family Services (the Department) removed real party in interest A. St. A. from his parents' home at birth and placed A. St. A. with a licensed foster family in Nevada. A. St. A.'s maternal grandmother, petitioner Aundrea G., later expressed an interest in having A. St. A. placed with her in California. The Department submitted an Interstate Compact on the Placement of Children (ICPC) request, which was required to place A. St. A. out of state with Aundrea. The ICPC report

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came back, noting several concerns and only approving Aundrea for short-term placement. Due to the concerns cited in the report, the district court ordered that A. St. A. remain with his foster family rather than be placed with Aundrea on a temporary basis.

Aundrea then filed a motion to have A. St. A. placed with her, and the district court conducted an evidentiary hearing. At the district court's direction, the Department requested an updated ICPC assessment concerning Aundrea's suitability to serve as a long-term adoptive resource for A. St. A. While waiting for the updated ICPC report, the district court conducted a trial to consider terminating the parental rights of A. St. A.'s parents but held in abeyance the order memorializing its decision until it decided Aundrea's motion for placement. After allowing several continuances in hopes of receiving an updated ICPC report, the district court entered an order denying Aundrea's motion, finding that it was in A. St. A.'s best interest to remain with his foster family. Aundrea now seeks a writ of mandamus directing the district court to vacate its placement order and order A. St. A. to be placed with her.

"A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion." *Matter of J.B.*, 140 Nev., Adv. Op. 39, 550 P.3d 333, 337 (2024); *see also* NRS 34.160; *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Because the district court's placement order is not appealable, a petition for writ relief is the appropriate means to challenge such an order. *See Philip R. v. Eighth Jud. Dist. Ct.*, 134 Nev. 223, 226, 416 P.3d 242, 246 (2018).

Aundrea contends that the district court erred by denying her motion for placement because, as a family member, she has priority for

placement over A. St. A.'s foster family pursuant to NRS 432B.390(6). NRS 432B.390(6) only applies when a child is "placed in protective custody pending an investigation and a hearing." Here, Aundrea filed her motion for placement after the district court conducted its initial hearing to determine whether A. St. A. was required to be in protective custody. Thus, NRS 432B.390(6)'s preference requirement does not apply. Rather, because the district court had already determined that A. St. A. should not remain in his parent's custody, the statutory placement preference set forth in NRS 432B.550(6) applies. NRS 432B.550(6)(b)(1) explains that preference in placing the child is given first to a family member "who is suitable and able to provide proper care and guidance for the child," followed by a licensed foster home.

While NRS 432B.550(6) "creates a familial preference," it "is not intended to remove the district court's discretion in placement proceedings." *Clark Cnty. Dist. Att'y, Juv. Div. v. Eighth Jud. Dist. Ct.*, 123 Nev. 337, 345-46, 167 P.3d 922, 927-28 (2007). "[T]he statute creates a familial placement preference, not a presumption, and the district court must then consider" placing the child with that relative, "which must be guided by careful consideration of the child's best interest." *Id.* at 348, 167 P.3d at 929. The child's best interest should be the district court's main consideration when making a placement decision. *See id.* at 346, 167 P.3d at 928.

Aundrea has not met her burden of demonstrating that the district court arbitrarily or capriciously abused its discretion when resolving the placement motion. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (explaining that petitioners bear "the burden of demonstrating that [our] extraordinary relief is warranted"). To the extent Aundrea argues the district court had to wait for the updated

ICPC report before resolving the placement motion, the district court granted Aundrea several continuances while waiting for that report before finally resolving the motion and Aundrea does not cite to any authority that requires the district court to wait for such a report before making its decision. Further, the district court found that because Aundrea was sufficiently related to A. St. A., the statutory preference applied, then looked to Aundrea's suitability "to provide proper care and guidance for [A. St. A.]" NRS 432B.550(6)(b)(1); *see also Clark Cnty. Dist. Att'y*, 123 Nev. at 348, 167 P.3d at 929 ("Under NRS 432B.550, the district court must first determine whether the relative[ ] seeking custody of a child [is] sufficiently related to the child, then the court must determine suitability."). The district court considered the suitability of Aundrea's home, A. St. A.'s best interest, and which placement option would best serve "the legislative goals and objectives of the [statute] by providing a stable, safe and healthy environment for the child considering *all* of the circumstances surrounding the placement." *In re Guardianship of N.S.*, 122 Nev. 305, 313-14, 130 P.3d 657, 662-63 (2006) (quoting *Youth & Fam. Servs. v. M.F.*, 815 A.2d 1029, 1038 (2003)). The district court also considered the foster family's ability to promote regular visitation between A. St. A. and his biological siblings as they all reside in Nevada, whereas if A. St. A. was moved to California to reside with Aundrea, those visitations would be limited. *See Clark Cnty. Dist. Att'y*, 123 Nev. at 348, 167 P.3d at 929 ("Preservation of familial relationships is an important consideration in determining what is in the child's best interest for placement purposes"). Because the district court conducted the proper analysis under NRS 432B.550 and made sufficient findings to explain its decision regarding A. St. A.'s best interests, we cannot

conclude that the district court arbitrarily and capriciously abused its discretion in denying Aundrea's motion. We therefore

ORDER the petition DENIED.

Pickering, J.  
Pickering

Parraguirre, J.  
Parraguirre

STIGLICH, J., dissenting:

I dissent. I would grant the petition.

Stiglich, J.  
Stiglich

cc: Hon. Cynthia N. Giuliani, District Judge  
The Law Offices of Frank J. Toti, Esq.  
Athena Eliades  
Gordon Law Offices  
Clark County District Attorney/Civil Division  
Maria A. Perez Avilez  
Eighth District Court Clerk