

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT BLAIR METZ,  
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE, AND THE HONORABLE  
SCOTT JORDAN, DISTRICT JUDGE,  
FAMILY COURT DIVISION,

Respondents,

and

AMY BETH METZ,  
Real Party in Interest.

No. 41575

**FILED**

OCT 05 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This is an original proper person petition for a writ of prohibition challenging a district court order concerning allegations of perjury and declining to order real party in interest to pay child support.

A writ of prohibition is the proper remedy to restrain a district court from exercising a judicial function without or in excess of its jurisdiction.<sup>1</sup> A writ may be issued only where "there is not a plain, speedy and adequate remedy in the ordinary course of law."<sup>2</sup> The issuance of a writ "is purely discretionary" with this court.<sup>3</sup>

We have reviewed the petition, and we conclude that our

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<sup>1</sup>NRS 34.320; see also Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

<sup>2</sup>NRS 34.330.

<sup>3</sup>Smith, 107 Nev. at 677, 818 P.2d at 851.

intervention by extraordinary writ is not warranted. Specifically, the documents before this court establish that the district court did not exceed its jurisdiction when it concluded that petitioner failed to establish that real party in interest perjured herself during the underlying child custody proceedings. With respect to the portion of the district court's order concerning child support, petitioner has timely filed an appeal from the order, which is currently pending before this court as Docket No. 41448. Thus, since petitioner has an adequate legal remedy in the form of an appeal, he is precluded from seeking writ relief as to the issues concerning child support.<sup>4</sup>

Finally, in his petition, petitioner urges this court to disqualify Judge Jordan. The documents before this court reveal that twice in 1998, petitioner attempted to disqualify Judge Jordan, and each time his motion was denied. In both instances, Judge McGee concluded that petitioner's disqualification affidavits were untimely under NRS 1.235(1), and that prejudice or bias had not been established.<sup>5</sup> A party may not wait to see how the judge will rule, then use a disqualification affidavit to overturn an adverse ruling and obtain a new ruling by a new judge. Judge Jordan has presided over the underlying proceedings since 1998, and has entered several orders, a number of which have favored petitioner. Thus,

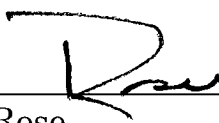
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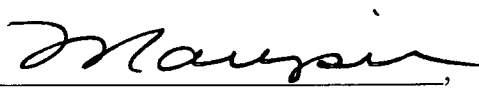
<sup>4</sup>NRAP 3A(b)(2); see also Pan v. Dist. Ct., 120 Nev. \_\_\_, 88 P.3d 840 (2004).

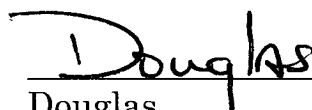
<sup>5</sup>Under NRS 1.235(1), a party who seeks to disqualify a judge for bias or prejudice must file an affidavit specifying the basis for disqualification not less than twenty days before the date set for trial or hearing of the case, or not less than three days before the date set for a pretrial hearing.

petitioner has not demonstrated that Judge Jordan should be disqualified.  
Accordingly, we deny the petition.<sup>6</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Scott Jordan, District Judge, Family Court Division  
Robert Blair Metz  
Amy Beth Metz  
Washoe District Court Clerk

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<sup>6</sup>See NRAP 21(b).