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Manuela H. v. The Eight Judicial District Court of Nevada, in and for the County of Clark; and the Honorable Robert Teuton and The State of Nevada, 132 Nev., Adv. Op. 1 (Jan 7, 2016)

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*Manuela H. v. The Eight Judicial District Court of Nevada, in and for the County of Clark; and the Honorable Robert Teuton and The State of Nevada*, 132 Nev., Adv. Op. 1 (Jan 7, 2016)<sup>1</sup>

## FAMILY LAW: ABUSE AND NEGLECT

### **Summary**

The court held that in an abuse and neglect case, when the district court establishes a case plan which includes an action step not related to a specific allegation in the abuse and neglect petition, the court must make “specific factual findings that justify the action step with which the parent must comply.” In the present case, the district court did not make such findings as to its requirement that petitioner, Manuela H., submit to drug testing, thus the supreme court granted her petition for a writ of mandamus challenging the district court’s order.

### **Background**

Manuela H. and her two small children, A.H. and K.H., lived with her boyfriend Jonathan B. In February 2014 the children’s babysitter questioned Jonathan about bruising on fifteen month old K.H.’s face. Jonathan claimed the girl’s older sister caused the bruising in a fight. However, later Manuela claimed that K.H.’s bruising occurred when she fell off the bed. The babysitter took K.H. to the hospital where the treating physician suspected child abuse and contacted the Department of Children and Family Services (DFS). DFS placed both children under protective custody and put them in their grandmother’s care. The court, pursuant to NRS 432B.470<sup>2</sup> and NRS 432B.480<sup>3</sup>, conducted a protective custody hearing two days later and found that cause existed to remove the children from the home. The court approved the children’s placement in protective custody and granted supervised visits to Manuela and K.H.’s father.

#### *Abuse/neglect petition*

The state filed an amended abuse and neglect petition (the court’s record did not state the reason for the amendment) alleging that Manuela had not protected K.H. from abuse by Jonathan and that she observed or knew that Jonathan slapped K.H. and A.H. on the faces twice and he had admitted it. Further, the petition alleged Manuela and K.H.’s father both had histories of domestic violence making them inappropriate to care for the children. Finally, it alleged that K.H.’s admitted to methamphetamine use but it did *not* include allegations that Manuela used illegal drugs.

#### *Dispositional hearing and case plan*

DFS’ case plan included a requirement that Manuela “randomly submit to drug testing.” Manuela, after volunteering to take a drug test which came back negative, objected to the requirement as the state had not alleged that she used illegal drugs in its petition. The state argued that it included the requirement because one clean test was inconclusive and because Manuela associated with drug users. The district court “imposed a reasonable belief standard” rather than ordering random drug testing, allowing a DFS agent to require a test if Manuela exhibited signs of drug use. If the test came back positive she would be required to complete a substance abuse evaluation.

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<sup>1</sup> By Audra Powell.

<sup>2</sup> NEV. REV. STAT. § 432B.470 (2013) (requiring a hearing within seventy-two hours of a child being placed in protective custody).

<sup>3</sup> NEV. REV. STAT. § 432B.480 (2013) (explaining the court’s duty to determine whether it would be in the best interest of the child to remain in the home or be placed in protective care outside the home).

Manuela filed a writ petition asking to the court to either “(1) prohibit the district court from requiring that she submit to a drug test or (2) require the district court to amend the case plan and eliminate the drug-test requirement.” The court denied her petition as she had not pursued other avenues available to remedy the situation. Pursuant to NRS 432B.570(1)<sup>4</sup> Manuela filed a motion to amend her case plan, arguing that the allegations in the petition did not relate to the requirement for drug testing. The district court denied her motion; having no other adequate remedy at law Manuela filed another petition as well as a constitutional claim for unreasonable search.

## **Discussion**

### *Writ relief*

“A writ of prohibition may be warranted when a district court acts in excess of its jurisdiction.”<sup>5</sup> It is generally only available when there is “no plain, speedy, and adequate remedy” at law.<sup>6</sup> The court has absolute discretion when deciding whether relief is warranted.<sup>7</sup> Although the court doesn’t generally consider writs regarding interlocutory orders, if the court decides the underlying issue needs clarification it may consider it.<sup>8</sup> As Manuela had no other remedy at law, and the district court’s jurisdiction needed clarification, the court considered her writ.

### *Factual findings*

Manuela argued that the court exceeded its jurisdiction by ordering her to submit to drug tests with no correlation to the neglect petition, specifically that NRS 432B.540 does broaden the district court’s power and allow it to create requirements without relation to the State’s petition. The state countered that in the best interest of the child, NRS 432B.540 required it to create an “appropriate plan to provide for the permanent placement of the children.”

The court defined the state’s responsibility regarding the best interest of the child, which included creating a case plan with action steps leading to the objective of reuniting a family or finding permanent care for the child. Under NRS 432B.540(2) a case plan should include “a description of the services to be provided to the child and parent” to meet the goal of reunification or adoption, justification of the services choice, and a “description of how the order of the court will be carried out.” The district court has discretion to order parents to undergo many types of treatment and testing if it considers it to be in the best interest of the child.<sup>9</sup> The court’s paramount concern in moving towards the specified goals is the “health and safety of the child.”<sup>10</sup> The court must make factual findings before it can determine the best interest of the child.<sup>11</sup> Under NRS. 432.B560(1), the court may “order a parent to undergo ... testing that deviates from the petition if ... necessary to protect the child’s best interest, *so long as* the district court issues factual findings to support the action step.” (emphasis added) The court prefers that the district court issue “specific, relevant

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<sup>4</sup> NEV. REV. STAT. §432B.570(1) (2013) (allowing an individual to move the court to revoke an order after a protective custody hearing) *But See* Nev. Rev. Stat. §432B.570(2) (The court still will base its decision on the best interest of the child).

<sup>5</sup> Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court, 128 Nev., Adv. Op. 21, 276 P.3d 246, 249 (2012).

<sup>6</sup> NEV. REV. STAT. §34.170.

<sup>7</sup> Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

<sup>8</sup> Oxbow Constr., LLC v. Eighth Judicial Dist. Court, 120 Nev. 222,228, 88 P.3d 840, 844 (2004).; Renown Reg’l Med. Ctr. V. Second Judicial Dist. Court, 130 Nev. Adv. Op. 80, 335 P.3d 199, 202 (2014).

<sup>9</sup> NEV. REV. STAT. § 432B.560(1)(a).

<sup>10</sup> NEV. REV. STAT. § 432B.393(2).

<sup>11</sup> Davis v. Ewalefo, 131 Nev., Adv. Op. 45, 352 P.3d 1139, 1143 (2015).

findings” and an explanation of any deviation from the petition, if the legal basis for the deviation is unclear.<sup>12</sup>

Here, the district court’s order regarding drug testing was not supported by factual findings. The state’s contentions regarding Manuela’s association with drug users did not substantiate the order. Further, the state did not connect the order regarding drug testing to its purpose of protecting the best interest of the child. “Because there are no explicit factual findings that show why [drug testing requirements] in Manuela’s case plan [are] justified” Manuela’s petition was granted. The court declined to reach Manuela’s constitutional claim.

### **Conclusion**

The district court has authority to require steps above and beyond those related to an abuse and neglect petition. However, the court must, by specific factual finding, create a logical relationship between the additional requirements and the protection of the best interest of the child. Drug testing a parent is not per se related to the best interest of the child.

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<sup>12</sup> *Id.*