

FILED

11/29/2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 16-0712

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 16-0712

FILED

NOV 29 2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

MATHEW ALLAN SHEPARD, as Parent
and Father of R.S., a minor child,

Petitioner,

v.

THE MONTANA FIRST JUDICIAL
DISTRICT COURT, AND THE
HONORABLE DEEANN COONEY,
PRESIDING JUDGE,

Respondent.

ORDER

The petitioner, Mathew Allan Shepard, by counsel, has filed a petition for writ of supervisory control and expedited request for stay pending resolution. Shepard seeks a reversal of the District Court order entered November 23, 2016, denying his motion for substitution of District Court judge, and scheduling a hearing for Thursday, December 1, 2016, on the Mother's motion to modify the parenting plan. He also requests that we stay the subject hearing pending resolution of this matter.

Supervisory control is available only where urgency or emergency factors exist making the normal appeal process inadequate. M. R. App. P. 14(3). M. R. App. P. 6(3)(k) expressly provides that in a civil case, an aggrieved party may appeal from an order granting or denying a motion for substitution of judge. The reason we granted supervisory control in *Torres v. Eleventh Judicial Dist. Court*, 2014 Mont. LEXIS 580, 376 Mont. 549, 347 P.3d 265, upon which Shepard relies in his petition, was because there is no corresponding rule allowing an immediate appeal in a criminal case from an order denying a motion for substitution of judge. Because Shepard has a right of immediate appeal in this matter,

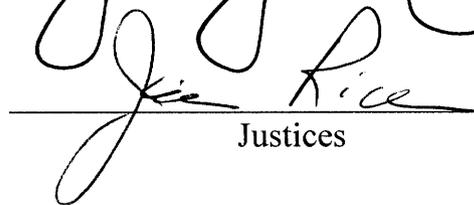
IT IS ORDERED that Shepard's petition for writ of supervisory control is DENIED.

The Clerk of this Court shall provide immediate notice of this Order to all counsel of record and to the Honorable Dee Ann Cooney, Montana First Judicial District Court.

DATED this 29th day of November, 2016.



Chief Justice



Justices