IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERIC A. CARUCCI, Appellant, vs. MELINDA ELLIS, F/K/A MELINDA CARUCCI, Respondent.	No. 43502
MELINDA ELLIS, Appellant, vs. RODERIC A. CARUCCI, Respondent.	No. 43925

FILED

MAY 18 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL IN DOCKET NO. 43502 AND ALLOWING APPEAL IN DOCKET NO. 43925 TO PROCEED

These are consolidated appeals from a district court order denying a motion to modify the divorce decree (No. 43502) and a district court order altering the child custody arrangement (No. 43925). Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.

Under the parties' 2000 divorce decree, which incorporated the parties' paternity and marital settlement agreement, they were awarded joint legal custody of their minor child, with the mother, Melinda Ellis, having primary physical custody and the father, Roderic Carucci, having visitation. Carucci was required to pay child support in the amount of $1,000 per month. The decree further provided that Carucci maintain a $300,000 life insurance policy for the child's benefit. Ellis was named the

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insurance policy's beneficiary. Carucci did not appeal from the final decree.

In 2004, Carucci moved the district court to reduce his monthly child support obligation and to amend the life insurance policy requirements. Ellis opposed the motion, and the matter was scheduled for a hearing. Before the hearing was conducted, however, Carucci moved the district court to change the child custody arrangement. In particular, Carucci sought primary physical custody. Following a hearing, the district court entered a written order on May 26, 2004, denying Carucci's motion to modify the child support obligation and the insurance policy. The order did not address the motion to change custody. Carucci timely appealed from the May 2004 order (No. 43502).

Thereafter, a hearing was conducted on Carucci's motion to change custody, and on August 27, 2004, the district court entered an order granting the motion. The district court found that there had been changed circumstances and that a change in custody would substantially benefit the child.[1] Thus, the August 2004 order awarded Carucci and Ellis joint physical custody and determined that Carruci's child support obligation shall be calculated according to Wright v. Osburn.[2] Ellis timely appealed from the August 2004 order (No. 43925).

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[1]See Murphy v. Murphy, 84 Nev. 710, 711, 447 P.2d 664, 665 (1968) (providing that a change of primary physical custody is warranted only when "(1) the circumstances of the parents have been materially altered[ ] and (2) the child's welfare would be substantially enhanced by the change").

[2]114 Nev. 1367, 1368-69, 970 P.2d 1071, 1072 (1998) (setting forth a formula for determining child support when custody is shared equally and there is a disparity in income between the parents).

When our preliminary review of Carruci's appeal in Docket No. 43502 revealed a potential jurisdictional defect, we ordered him to show cause why the appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the portion of the appeal concerning child support may have been rendered moot by the subsequent district court order appealed by Ellis in Docket No. 43925.

In response to our show cause order, Carucci contends that the child support issue is not moot because following the entry of the August 2004 order changing custody, the district court entered an order in November 2004 that erroneously calculated support under the Osburn formula.[3] In the November 2004 order, the district court found that Carucci's support obligation would remain at $1,000 per month, subject to an offset. According to Carucci, since the November 2004 order, ultimately, did not change his child support obligation from the May 2004 order, the August 2004 order did not render the support issue moot.

This court's duty is to decide actual controversies, not to give opinions on moot questions.[4] Because the August 2004 order modified Carucci's child support obligation, we conclude that the May 2004 order is

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[3]While the November 2004 order was entered subsequent to the filing of these consolidated appeals, the order has been included in the parties' joint appendices. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (providing that this court will only consider documents that were properly before the district court).

[4]See NCAA v. University of Nevada, 97 Nev. 56, 624 P.2d 10 (1981).

moot with regard to child support. Moreover, the documents before this court show that Carucci did not appeal from the November 2004 order.[5]

With regard to the portion of the May 2004 order concerning the insurance policy, the district court denied Carucci's motion to amend the insurance policy after concluding that he had agreed, under the decree, to maintain the $300,000 policy for the child's benefit, with Ellis named as the policy's beneficiary. And the district court noted that while the face value of the policy was $500,000, Carucci was only required to maintain the $300,000 policy coverage that he agreed to. Carucci contends that this court has jurisdiction to consider this portion of the May 2004 order on appeal because the issue is ripe for review and, since the child custody arrangement has been changed, the agreement concerning the insurance policy may be a nullity.

Under NRAP 3A(b)(2), a post-judgment order affecting the rights of the parties growing out of the final judgment may be appealable as a special order made after final judgment.[6] In Burton v. Burton,[7] this court further recognized that an order denying a motion to modify a family court order, based on changed factual or legal circumstances, is appealable as a special order after final judgment. Here, Carucci did not appeal from the divorce decree, and he did not move the district court to modify the decree based on changed factual or legal circumstances. In addition, since

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[5]NRAP 4(a)(1) (stating that a notice of appeal is due no later than thirty days after notice of the judgment's entry is served); NRAP 26(c) (adding three days to the appeal period if service is accomplished by mail).

[6]Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002).

[7]99 Nev. 698, 669 P.2d 703 (1983).

the May 2004 order, as it pertains to the insurance policy, does not substantially affect any of Carucci's personal or property rights under the decree, it is not an appealable special order after final judgment.

Accordingly, as we lack jurisdiction over the appeal in Docket No. 43502, we dismiss it. Each party shall bear his or her own attorney fees and costs with respect to that appeal. The appeal in Docket No. 43925 may proceed.

It is so ORDERED.

Douglas, J.

Becker, J.

Parraguirre, J.

cc: Hon. Deborah Schumacher, District Judge Family Court Division
Larry J. Cohen, Settlement Judge
Karla K. Butko
Carucci and Thomas
Jack Sullivan Grellman
Washoe District Court Clerk