

IN THE SUPREME COURT OF THE STATE OF NEVADA


JENNIFER M. DEVOGE,
Appellant,
vs.
TRAVIS S. DRAKE,
Respondent.

No. 43745

FILED

FEB 13 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is an appeal from a district court order establishing child custody. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge. We conclude that the district court did not abuse its discretion by denying appellant Jennifer M. DeVoge's motion to modify custody or, in the alternative, to clarify the prior order, without holding an evidentiary hearing.

Standard of review

The district court has "broad discretion[] . . . in determining questions of child custody[,] [and] [t]his court will not disturb [those] determinations absent a clear abuse of discretion."¹ The district court's sole consideration when exercising its discretion must be the best interests of the minor child.²

'Adequate cause'

The district court may deny a motion to modify custody without holding an evidentiary hearing "unless the moving party demonstrates 'adequate cause' for holding a hearing."³ "Adequate cause'

¹Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

²NRS 125.480(1).

³Rooney v. Rooney, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993).

requires something more than allegations which, if proven, might permit inferences sufficient to establish grounds for a custody change.”⁴ To demonstrate adequate cause, the moving party must present a prima facie case for modification of custody by showing that “(1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching.”⁵

In her motion to modify custody of their minor child, DeVoge alleged that respondent Travis S. Drake failed to become financially self-sufficient and move out of his parents’ home by June 2003, despite the district court’s prior order to do so. DeVoge argued that this failure constituted adequate cause to hold an evidentiary hearing regarding her motion to modify custody.

The district court did not abuse its discretion by denying DeVoge’s motion. We conclude that respondent’s failure to move out of his

⁴Id. at 543, 853 P.2d at 125.

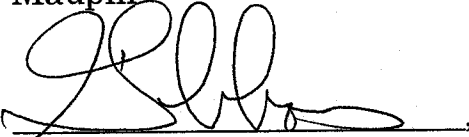
⁵Id.


parents' home does not constitute adequate cause to hold an evidentiary hearing. ⁶

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin
 J.
Gibbons

 J.
Hardesty

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Lynn R. Shoen, Chtd.
Dennett & Winspear, LLP
Clark County Clerk

⁶After an evidentiary hearing, “[a] change of primary physical custody is warranted only when: (1) the parent’s circumstances have been materially altered, and (2) the child’s welfare would be substantially enhanced by the change.” Martin v. Martin, 120 Nev. 342, 345, 90 P.3d 981, 983 (2004) (citing Murphy v. Murphy, 84 Nev. 710, 711, 447 P.2d 664, 665 (1968)).