

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG G. BOURKE,
Appellant,
vs.
MELANIE C. DUBOIS,
Respondent.

No. 45264

FILED

AUG 26 2005

ANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion to modify and/or clarify an order establishing a child custody arrangement. Eighth Judicial District Court, Family Court Division, Clark County; Steven E. Jones, Judge. Respondent has filed a motion to dismiss this appeal for lack of jurisdiction; appellant opposes respondent's motion, and respondent has filed a reply.

The parties were never married and are the parents of a minor child born in 2003. In February 2004, the district court entered a written order establishing a child custody arrangement. Under the custody order, the parties were awarded joint legal custody, with respondent having primary physical custody and appellant having visitation. Notice of the order's entry was served on February 27, 2004. Appellant did not appeal from the February order.

In December 2004, appellant moved the district court to modify and/or clarify the "temporary" custody order and for an evidentiary hearing. According to appellant, the district court's February order was not final, because issues concerning a custody evaluation, drug and alcohol assessment, paternity test, and violence assessment remained pending. After a hearing on appellant's motion, the district court entered a written order on April 7, 2005, denying appellant's "motion for reconsideration" of

the February order and denying appellant's request for an evidentiary hearing. In its order, the district court stated that the February 2004 order was final as to child custody. Specifically, the court noted that "[t]here was no temporary language in the order and there was nothing in the February 25, 2004 order that states it was temporary in nature." Appellant has appealed from the April 2005 order.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.¹ No appeal may be taken from an order denying a motion for reconsideration.² 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.³ In Burton v. Burton,⁴ 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, appellant moved the district court to modify and/or clarify the February order, insisting that the order was temporary. Appellant did not move the district court to modify the order based on changed circumstances. In its April order, the district court stated that the February order was final, and declined to grant appellant's motion to

¹Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).


²See Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (holding that an order denying a motion for reconsideration is not appealable).

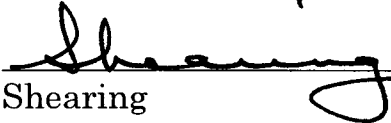
³Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002).

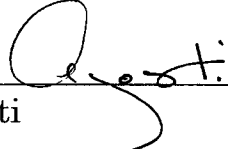
⁴99 Nev. 698, 669 P.2d 703 (1983).

modify the custody arrangement. Thus, the district court's April order is not a special order after final judgment, because it did not affect the rights of the parties growing out of the final custody order.⁵ Accordingly, this court lacks jurisdiction to consider the April 2005 order denying appellant's motion to modify custody and for an evidentiary hearing, and we dismiss the appeal. Finally, we deny respondent's request for attorney fees and sanctions.

It is so ORDERED.⁶


_____, V.C.J.
Rose


_____, Sr. J.
Shearing


_____, Sr. J.
Agosti

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Mills & Mills
Kelleher & Kelleher, LLC
Tuverson & McBride
Clark County Clerk

⁵See Gumm, 118 Nev. 912, 59 P.3d 1220.

⁶The Honorable Miriam Shearing, Senior Justice, and the Honorable Deborah A. Agosti, Senior Justice, participated in the decision of this matter under a general order of assignment entered on July 14, 2005.