

IN THE SUPREME COURT OF THE STATE OF NEVADA

STACIE M. SMITH,
Appellant
vs.
JAMES W. SCHWARZ,
Respondent

No. 46044

FILED

FEB 21 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a temporary district court order concerning child custody. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie Jr., Judge.

Our review of the documents transmitted to this court, pursuant to NRAP 3(e), and the record reveals a jurisdictional defect. Specifically, the August 30, 2005 order concerning the child custody arrangement is not substantively appealable because it does not appear to finally alter or establish custody.¹ Here, the August 2005 order awarded "temporary" sole custody of the children to respondent and suspended appellant's visitation after concluding that she was in contempt of a prior visitation order.² The August order also provides that once the children are returned to Nevada from Hawaii, further proceedings may be

¹NRAP 3A(b)(2).

²See Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000) (recognizing that a contempt order arising from within an underlying district court action is not appealable, but challengeable only by extraordinary writ).

conducted and that appellant must post a bond for future visitation. The order does not resolve respondent's June 6, 2005 motion to modify custody, or appellant's July 22, 2005 countermotion to modify custody. Thus, the order is not appealable because it is subject to review and modification by the district court.³ Once the district court enters a written order resolving the custody issues, appellant may appeal if she is aggrieved.⁴ Since we lack jurisdiction to consider this appeal, we dismiss it.

It is so ORDERED.⁵

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

³See In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 901 (1989) (holding that no appeal may be taken from a temporary order subject to periodic mandatory review and modification by the court).

⁴See NRAP 3A(a); NRAP 4(a).

⁵In light of this order, we deny appellant's November 18, 2005 motion to admit documents and taped evidence to this court, and we direct the clerk of this court to return, unfiled, the proper person documents and taped evidence provisionally received in this court on November 18, 2005. Further, we deny as moot appellant's October 24, 2005 transcript request and her November 18, 2005 motion for a stay.

cc: Hon. T. Arthur Ritchie Jr., District Judge, Family Court Division
Stacie M. Smith
James W. Schwarz
Clark County Clerk