

IN THE SUPREME COURT OF THE STATE OF NEVADA

CONSTANCE RAJNOVICH,
Appellant,
vs.
EDWARD RAJNOVICH,
Respondent.

No. 46561

FILED

SEP 08 2006

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying appellant's petition to relocate with the children to Wyoming. Eighth Judicial District Court, Family Court Division, Clark County; Lisa Brown, Judge.

When our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect, we directed appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. In particular, we explained that the December 5, 2005 order denying appellant's petition to relocate with the children did not appear substantively appealable.¹

In May 2005, appellant, who was awarded primary physical custody of the minor children under the divorce decree, petitioned the district court for permission to relocate with the children to Wyoming. After a hearing, the district court entered a written order on July 28, 2005,

¹See NRAP 3A(b).

denying appellant's petition.² Appellant did not appeal from the July order. Thereafter, on August 25, 2005, appellant filed another petition to relocate with the children to Wyoming. After a hearing on the second petition, the district court entered an order on December 5, 2005, denying appellant's petition. Notice of entry of the December order was served by mail on December 6, 2005. Appellant timely filed her notice of appeal on January 3, 2006.

An order that does not affect any rights of the parties, growing out of the final judgment, is not appealable as a special order made after final judgment.³ This court has made an exception for appeals from orders denying motions to amend divorce decrees "where the motion is based upon changed factual or legal circumstances and the moving party is not attacking the original judgment."⁴ Such an order is appealable as a "special order made after final judgment."⁵

Appellant chose not to appeal from the July 2005 district court order denying her first petition to relocate to Wyoming with the children. We conclude that the December 2005 order denying appellant's August 25, 2005 petition to relocate does not qualify as a special order after final judgment, because it does not alter or affect the substantive rights and

²Notice of entry for the July order was filed on August 18, 2005. It is unclear from the documents before this court when the notice of entry was served.


³See Gumm v. Mainor, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).


⁴Burton v. Burton, 99 Nev. 698, 700, 669 P.2d 703, 705 (1983).

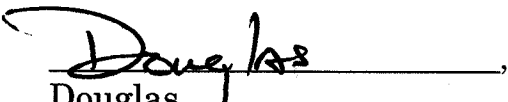
⁵Id.; see NRAP 3A(b)(2).

obligations of the parties growing out of the divorce decree. And, although, in Burton v. Burton,⁶ this court created an exception to the "special order" doctrine in order to review district court rulings based on alleged changed circumstances, appellant's August petition was not based on any changed factual or legal circumstances. Thus, this is not an appealable order under Burton. Accordingly, as we lack jurisdiction, we

ORDER this appeal DISMISSED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Lisa Brown, District Judge, Family Court Division
Miguel Galvez Jr.
Edward Rajnovich
Clark County Clerk

⁶99 Nev. 698, 669 P.2d 703.