

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANN WIESNER,  
Appellant,  
vs.  
DANIEL WIESNER,  
Respondent.

No. 50310

**FILED**

**JUN 04 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order, entered after a limited remand, modifying a child custody arrangement and visitation schedule. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie Jr., Judge.

FACTS AND PROCEDURAL HISTORY

The district court entered a divorce decree, dissolving the parties' marriage on March 14, 2007. By the terms of the decree, appellant was awarded primary physical custody of the parties' minor child. The decree also awarded appellant child support at the statutory maximum under NRS 125B.070, divided the parties' property, debts, and assets, and, pursuant to the parties' agreement, determined that spousal support had been waived. Appellant did not appeal from the decree within 33 days after written notice of the decree's entry was served.<sup>1</sup> See NRAP 4(a)(1); NRAP 26(c).

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<sup>1</sup>Notice of the decree's entry was served on appellant by mail on March 15, 2007.

Subsequently, on May 21, 2007, respondent filed a motion seeking, among other things, to modify the custody arrangement and his child support obligation. Appellant objected to the motion. After a hearing, the district court entered an order on October 4, 2007, granting respondent's motion in part and denying it in part. In particular, the order modified the custody arrangement to joint physical custody, with the parties having roughly equal custodial time, but denied respondent's request for a downward adjustment to his child support obligation, finding that a disparity in income warranted respondent's continued payment of the statutory maximum, despite the change in the custody arrangement.

Appellant timely appealed from that order on September 19, 2007.<sup>2</sup> Subsequently, respondent filed a motion in this court for a limited remand on the child custody issue under Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978), pointing out that, in the district court, appellant had filed a motion concerning custody and visitation, which respondent opposed, and that he had filed a countermotion in the district court to

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<sup>2</sup>Although appellant's appeal was filed prematurely, we consider it timely. See NRAP 4(a)(6).

According to her proper person appeal statement, appellant also seeks to challenge portions of the March 14, 2007, divorce decree, including the division of property, assets, and debts and the child and spousal support determinations. Because she neglected to timely appeal from the March 17, 2007, divorce decree in which those determinations were made, however, those issues are not proper for our consideration. See Whitman v. Whitman, 108 Nev. 949, 840 P.2d 1232 (1992) (explaining that when a party fails to timely appeal from a divorce decree, that party cannot attack the decree in the context of a subsequent appeal from a post-decree order).

further modify the child custody arrangement. Respondent's motion was supported by the district court's certification that it was inclined to determine and rule on the custody and visitation matters.<sup>3</sup> This court granted the motion, and the district court, on remand, entered an order modifying the visitation schedule so that appellant had one hour of supervised visitation with the child per week. Appellant has filed a timely supplemental notice of appeal from that order.<sup>4</sup>

## DISCUSSION

### Standard of Review

Child custody and support matters rest in the district court's sound discretion, Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996), and this court will not disturb a district court's custody decision absent an abuse of that discretion. Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993). In child custody matters, "the sole consideration of the court is the best interest of the child." NRS 125.480(1). When the district court determines a child's best interest, we presume that it has properly exercised its discretion. Wallace, 112 Nev. at 1019, 922 P.2d at 543. The district court, however, must have reached its conclusions for the

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<sup>3</sup>Appellant filed an amended notice of appeal on November 21, 2007, purporting to challenge the district court's order certifying that it was inclined to rule on respondent's motion to modify custody. That order, however, is not appealable. See NRAP 3A(b); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

<sup>4</sup>The clerk of this court is directed to file volume 12 of the district court record, which was provisionally received in this court on March 3, 2009, and which contains certified copies of documents that were filed, and orders that were entered, in the district court after this appeal was docketed in this court.

appropriate reasons. Rico v. Rodriguez, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005); Sims, 109 Nev. at 1148, 865 P.2d at 330. This court will not set aside the district court's factual findings in a custody matter if they are supported by substantial evidence. Ellis v. Carucci, 123 Nev. 145, 161 P.3d 239 (2007).

Substantial evidence supports the district court's order modifying the child custody arrangement

The party seeking to modify custody bears the burden of establishing that "(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." Id. at 150-51, 161 P.3d at 242-43. It is not this court's role to reweigh evidence or testimony. Id. at 152, 161 P.3d at 244.

Here, with regard to the changed circumstances necessary to support further modifying the custody arrangement, respondent alleged that appellant had not been following court orders, had not abided by the visitation schedule and school-choice decision, had poor parenting practices, including hiding the child in her home when respondent arrived to pick her up for his custodial time, and had possible mental health issues. At the hearing, respondent asked that appellant be allowed only supervised visitation with the child. The district court, after considering evidence and testimony from numerous witnesses, found that circumstances had substantially changed, supporting respondent's motion to modify custody. In particular, the court found that, since the last custody determination was made, several incidents had occurred demonstrating a lack of appropriate parenting skills and judgment, as well as destructive behavior that was harmful to the child, including that appellant (1) chased respondent's vehicle with her own vehicle and then

willfully rammed into it while the child was in the car with respondent; (2) made false, inflammatory statements to a healthcare provider that respondent was armed and dangerous; and (3) persistently interfered with respondent's custodial time with the child.

The court also made findings regarding the best interest of the child and concluded that appellant's conduct, including disregarding visitation orders and orders specifying school choice, interfering with respondent's custodial rights, and taking actions that could have resulted in serious injury to respondent, the minor child, and others, was contrary to the child's best interest. See NRS 125.480(4) (explaining that the relevant factors for determining child's best interest include, among others, which parent is more likely to allow the child to have frequent associations and a continuing relationship with the other parent, and the physical, developmental and emotional needs of the child).

As substantial evidence supports the district court's findings in regard to custody modification, we perceive no abuse of discretion in its custody decision. Accordingly, we affirm the district court's custody order. Appellant's other requests for relief are either not properly before this court, or they lack merit, and are therefore denied

As additional matters, appellant has filed numerous documents in this court, requesting various forms of relief related to perceived district court errors and abuses allegedly occurring after the district court rendered its decision modifying the custody arrangement.

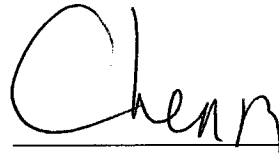
To the extent that appellant submitted documents that are not part of the district court record, those documents are not properly before us, and we have not considered them in resolving this appeal. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981). Any

questions regarding whether the record truly discloses what occurred in the district court are not appropriately directed to this court. See NRAP 10(c) (providing that, if any difference arises as to whether the district court record discloses what actually occurred in the district court, the difference must be submitted to and settled by that court); see also Carson Ready Mix, 97 Nev. 474, 635 P.2d 276. Additionally, appellant's criminal complaints and motions for default judgment are not properly directed to this court. See, e.g., NRCP 1 (indicating that Nevada's civil procedure rules govern procedure in the district court in all civil cases at law or in equity); NRCP 55 (setting forth district court default procedures). Finally, her other requests for relief either are not supported or the reasons for them lack merit. Thus, we deny appellant's motions and other requests for relief.

#### CONCLUSION

The district court's decision is supported by substantial evidence, and we therefore affirm its order modifying the child custody arrangement. Because the documents, motions, and complaints that appellant filed in this court are either not proper for this court's consideration, or they are not supported or lack merit, we deny any request for relief contained therein.

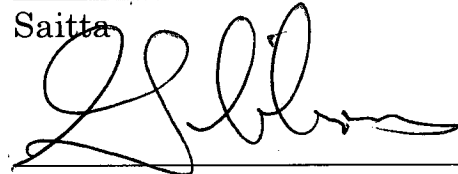
It is so ORDERED.<sup>5</sup>

 \_\_\_\_\_, J.

Cherry

 \_\_\_\_\_, J.

Saitta

 \_\_\_\_\_, J.

Gibbons

cc: Hon. T. Arthur Ritchie Jr., District Judge, Family Court Division  
DeAnn Wiesner  
Daniel Wiesner  
Karen A. Connolly, Ltd.  
Eighth District Court Clerk

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<sup>5</sup>In light of this order, we deny as moot respondent's March 16, 2009, proper person motion for a limited remand under Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978). Moreover, to the extent that respondent is seeking to enforce provisions of the divorce decree, no remand is necessary, as the district court retains authority to enforce its orders.