IN THE SUPREME COURT OF THE STATE OF NEVADA

ANNE SWANK,
Appellant,
vs.
MEIR SEGAL,
Respondent.

No. 50686

FILED

AUG 18 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order that (1) rejected as untimely appellant's peremptory challenge of the judge assigned to hear the paternity and custody matter, (2) set forth a temporary parenting plan, pending mediation, under which the parties share custody of their children, and (3) directed the parties to participate in mediation to formulate a permanent parenting plan. Eighth Judicial District Court, Family Court Division, Clark County; Sandra Pomrenze, Judge.

Respondent has filed a motion to dismiss this appeal, arguing that the district court's decision to reject appellant's peremptory challenge is not independently appealable and may be challenged only by writ petition or in the context of an appeal from a final judgment, which has not yet been entered in the underlying matter. Respondent also maintains that because the custody determination was temporary, pending mediation, that decision likewise is not appealable. Appellant opposes the motion, asserting that the order is appealable because her peremptory

challenge was timely and therefore the district court should not have exercised its jurisdiction over the paternity and custody matters.

Having reviewed the motion, appellant's opposition, and both parties' supporting documents, we conclude that the order set forth in appellant's notice of appeal is not substantively appealable because it does not finally alter or establish custody.[1] In particular, the order set forth a temporary parenting plan "pending mediation," expressly reserving remaining issues and setting the matter for further proceedings on a subsequent date, following mediation. Thus, the order is not appealable because it is subject to review and modification by the district court.[2] As for the district court's determination that appellant's peremptory challenge was untimely and that it therefore properly could hear and decide the paternity and custody matter before it, that decision is not independently appealable.[3] Instead, once the district court enters a

---

[1]NRAP 3A(b)(2).

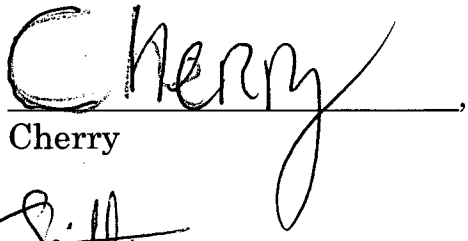
[2]See In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 901 (1989) (holding that no appeal may be taken from a temporary order subject to periodic mandatory review and modification by the court); cf. NRAP 3A(b)(2) (authorizing an appeal from an order finally establishing or altering custody of minor children).

[3]Although appellant seems to argue that when a peremptory challenge is filed timely, and the district court rejects it, that decision is appealable under SCR 48.1, that rule does not confer appellate jurisdiction. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (recognizing that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule); see also NRAP 3A(b) (listing appealable orders).

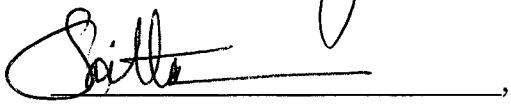
written order resolving the custody issues, appellant may appeal if she is aggrieved.[4]

Since we lack jurisdiction to consider this appeal, we ORDER this appeal DISMISSED.

_____, J.
Maupin



_____, J.
Cherry



_____, J.
Saitta

cc: Hon. Sandra Pomrenze, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Bourke & Nold
Law Office of Daniel Marks
Eighth District Court Clerk

---

[4]See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (explaining that although an interlocutory order is not independently appealable, it may be challenged in the context of an appeal from the final judgment or order); see also NRAP 3A(b)(2) (authorizing an appeal from a final custody determination); NRAP 4(a) (noting when appeals may be taken); cf. State Engineer v. Truckee-Carson Irrig., 116 Nev. 1024, 1029, 13 P.3d 395, 398 (2000) (recognizing that a district court order that grants or fails to grant a peremptory challenge may be challenged in the context of a petition for extraordinary relief).