IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADFORD BRENNAN,
Appellant,
vs.
ELIZABETH BRENNAN,
Respondent.

No. 50928

FILED

SEP 05 2008

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying appellant's motion to modify child custody, visitation, and child support and partially granting respondent's countermotion, which in part sought to enforce the divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we directed appellant to show cause why this appeal should not be dismissed. Our order to show cause explained our concern that the order from which appellant was appealing was not substantively appealable, since it appeared that the order merely enforced the district court's divorce decree, which required appellant to share in the nanny costs in addition to paying child support, and therefore did not constitute a special order after final judgment.[1]

Appellant timely responded to our show cause order, asserting that the order from which he seeks to appeal is a special order after final

[1]Appellant is not challenging the order to the extent that it denied his motion concerning child custody, visitation, and other support issues.

judgment because it indeed modified the terms set forth in the divorce decree. Appellant points out that the divorce decree contemplated that the parties' nanny at the time would be leaving in June 2005, and that the parties would have to renegotiate child care sometime before March 2005. According to appellant, it was thus understood that if they were not able to agree, one of them would have to move the court to examine the child care issue. Because respondent did not do so, appellant asserts that he was not obligated under the divorce decree or any other order to contribute to any child care expenses from July 2005 forward. However, since the district court granted respondent's countermotion in part, requiring appellant to pay for half of the child care expenses incurred between July 2005 and October 2007, appellant asserts that he may appeal from that decision under NRAP 3A(b)(2) because the district court's order modified his support obligation.

In reply, respondent asserts that the district court's order merely enforces the decree and thus is not appealable. In particular, she contends that the divorce decree was the final order, which clearly set forth respondent's continued obligation to pay for half of the child care expenses. Thus, she argues that the district court's order partially granting her countermotion merely construed and enforced the decree by requiring appellant to pay half of the child care expenses, since his failure to renegotiate child care expenses under the decree did not absolve him of the expenses set forth therein. Respondent points out that the portion of her countermotion seeking to increase appellant's child support specifically was denied as being outside of the three-year statutory review period, and she argues that it therefore follows that the court's order regarding child care expenses enforced the decree and did not modify appellant's support obligation.

Having considered the parties' arguments, we conclude that the decision from which appellant seeks to appeal is not substantively appealable because it merely enforces the previously entered divorce decree by directing appellant to continue to pay child support as set forth in the decree. Thus, it does not fall within the type of order contemplated under NRAP 3A(b)(2) because it does not affect the rights and liabilities of the parties under the divorce decree.[2] Accordingly, since the order at issue here only construed the decree as requiring appellant to continue to pay the child care expenses set forth therein and enforced that obligation,[3] it is not appealable under NRAP 3A(b)(2), and we therefore

ORDER this appeal DISMISSED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

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[2]See Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002) (recognizing that to be appealable under NRAP 3A(b)(2) as a special order after final judgment, the order must affect the rights of some party to the action, growing out of the judgment previously entered); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (explaining that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).

[3]See NRS 125B.140 (providing that the district court has the authority to enforce support orders); Koester v. Estate of Koester, 101 Nev. 68, 73, 693 P.2d 569, 573 (1985) (noting that an order construing an original divorce decree is not substantively appealable as a special order made after final judgment).

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Dawn R. Throne, Ltd.
Solomon Dwiggins & Freer
Eighth District Court Clerk