

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARREN MACK,

Appellant,

vs.

DEBRA LYN ASHLOCK-DUGAN,

Respondent.

No. 34735

**FILED**

OCT 07 1999

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. F. [Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court permitting respondent Debra Ashlock-Dugan to temporarily relocate from Reno, Nevada to Nevada City, California with the parties' minor children. The order appealed from is temporary in nature, pending a full hearing (scheduled for April 2000) on respondent's motion for permission to relocate with the minor children outside the state of Nevada. At that time, the district court will also consider appellant's motion for a change of custody.

Our preliminary review of the documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect.<sup>1</sup> Specifically, it appears that the

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<sup>1</sup>Ordinarily, when this court suspects that it may lack jurisdiction to consider an appeal, it issues an order to show cause, to which appellant would have an opportunity to respond. On August 26, 1999, appellant filed a motion for a stay. On September 2, 1999, respondent filed an opposition to that motion, in which respondent suggested that this court lacked jurisdiction over the appeal. In response, on September 9, 1999, appellant moved to file a reply, and tendered a reply, which discusses the pertinent jurisdictional

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order designated in the notice of appeal is not substantively appealable. See NRAP 3A(b). This court has jurisdiction of an appeal only when the appeal is authorized by statute or court rule. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). This court may consider an appeal from any order entered in a proceeding that did not arise in a juvenile court that finally establishes or alters the custody of minor children. NRAP 3A(b)(2). While an order of relocation arguably alters the custody and visitation of minor children, the order appealed from here is a temporary order, not a final one.

Appellant urges that the order appealed from is a "special order made after final judgment." See NRAP 3A(b)(2). Generally, an appealable special order after final judgment is one that affects the rights of the parties growing out of a final judgment. See, e.g., Wilkinson v. Wilkinson, 73 Nev. 143, 311 P.2d 735 (1957). Although the rights and liabilities of the parties are arguably temporarily affected by the district court's provisional order, the court will fully address the relocation motion and make a final determination with respect to custody and relocation after a hearing scheduled for April 2000. That order will be appealable.

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. . . continued

issues. We conclude that issuing an order to show cause under these circumstances is unnecessary, as jurisdiction has been addressed. We grant appellant's motion to file the reply, and we direct the clerk of this court to file the reply, which was received on September 9, 1999.

Thus, under these circumstances, we conclude that this court lacks jurisdiction of the instant appeal.<sup>2</sup> Accordingly, we

ORDER this appeal dismissed.<sup>3</sup>

Maupin J.  
Maupin

Shearing J.  
Shearing

Becker J.  
Becker

cc: Hon. Charles M. McGee, District Judge  
Silverman & Decaria  
Lemons Grundy & Eisenberg  
Sinai Schroeder Mooney Boetsch & Bradley  
Washoe County Clerk

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<sup>2</sup>Appellant cites a number of cases, arguing that this court routinely considers appeals in relocation cases as special orders after final judgment. None of them, however, is an appeal from a temporary order. The cases that appellant cites establish that this court will consider a final order that establishes relocation of minor children, but these cases do not establish that this court will review the merits of all temporary orders of relocation. Cf. In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 901 (1989) (district court order under NRS Chapter 432B awarding temporary custody of children to welfare division was not appealable because it was not a final order).

<sup>3</sup>We decline appellant's invitation to treat this appeal as a writ for extraordinary relief. In particular, we note that appellant has not complied with the procedural requirements for petitions requesting extraordinary relief. See NRS 34.170; NRS 34.330; NRAP 21(a). Additionally, in light of this order, we deny the motion for a stay as moot.