IN THE SUPREME COURT OF THE STATE OF NEVADA

NINA BUNCHE PIERCE,
Appellant,
vs.
GEORGE CICCARONE,
Respondent.

No. 52515

FILED

DEC 18 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 in a child custody matter. Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, Senior Judge, and Robert Teuton, Judge.

When our review of the documents before us revealed potential jurisdictional defects, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. In particular, it appeared that the September 10, 2008, oral ruling specified in appellant's notice of appeal was not substantively appealable because no written order had been entered and the oral ruling merely set aside a prior, temporary oral ruling pending the district court's further review of the matter.[1] Meanwhile, respondent filed a motion to dismiss for lack of jurisdiction and for NRAP 38 sanctions for having to respond to appellant's "frivolous" appeal.

Appellant timely responded to this court's show cause order, attaching copies of written district court orders reflecting the two oral rulings. In her response, appellant asserts that this court has jurisdiction

[1]See NRAP 3A(b).

over this appeal because, in the October 10, 2008, written order reflecting the September 10 oral ruling, the court made a final custody modification by setting aside the order issuing from the prior hearing, which had modified the custody arrangement set forth in the parties' divorce decree. Appellant timely filed an amended notice of appeal from the October 10 order.

Generally, this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.[2] While an order that affects the rights of the parties growing out of the divorce decree or that resolves a motion to modify custody based on changed factual or legal circumstances is substantively appealable as a special order after final judgment,[3] no appeal may be taken from a temporary ruling or, therefore, from an order setting aside that temporary ruling pending further consideration of an issue's merits, even in post-decree proceedings.[4]

Here, although appellant cured one of the noted jurisdictional defects by obtaining a written order, that order appears neither to render, nor to modify, a final determination regarding the parties' post-decree custody issues. According to the documents before this court, the district

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[2]Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

[3]NRAP 3A(b)(2); Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002); Burton v. Burton, 99 Nev. 698, 669 P.2d 703 (1983).

[4]See Gumm, 118 Nev. 912, 59 P.3d 1220; 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).

court orally pronounced the parties divorced on October 15, 2007, and reduced the divorce decree to writing on June 26, 2008. Under the terms of the decree, appellant was awarded primary physical custody of the parties' two minor children, and respondent was awarded visitation, which was to be carried out with use of a therapeutic aide and gradually increased over time, as specified therein.[5]

Apparently, the parties filed several motions after the decree was entered, raising issues concerning the custody portion of the decree. The district court held a hearing on certain motions on July 18, 2008.[6] In the resulting written order, the court indicated that it would consult with a university regarding therapeutic aide referrals; provided that respondent have visitation with the children "on Saturday from 9:00 a.m. to 11:00 a.m. for bowling," with appellant supervising; and noted that a return hearing would be scheduled. The written order did not expressly modify the divorce decree's visitation terms.

Thereafter, on September 10, 2008, the parties appeared before the court for a status check.[7] In the resulting written order, which was filed on October 10, 2008, and from which this appeal was taken, the

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[5]According to appellant, the minor children have been diagnosed with severe autism and other special needs. Under the divorce decree, respondent's visitation schedule began with two, two hour visitations per week for the first month and gradually increased in frequency and duration thereafter.

[6]Senior Judge Terrance P. Marren presided over the July 18, 2008, hearing.

[7]Senior Judge Gerald W. Hardcastle, who had issued the divorce decree, presided over the September 10, 2008, status check.

court directed the parties to comply with the divorce decree as written and purported to set aside the "orders" that resulted from the July 18 hearing, which were identified as pertaining to "modifications to the parties' visitation, temporary cessation of Parenting Coordinator, and other modifications." The court's order indicated that the court would consider any modifications at the next hearing and that an evidentiary hearing was set for October 24, 2008.[8]

Based on the above, it appears that the district court's July 18 ruling did not modify the divorce decree's custody arrangement, but instead, was intended to temporarily facilitate respondent's visitation rights pending obtaining a therapeutic aide, as set forth in the decree.[9] Accordingly, the October 10 order likewise did not modify the custody arrangement; rather, it merely enforced the decree pending further consideration of the matter.[10] As a result, the October 10 order is not substantively appealable.[11] As we lack jurisdiction, we

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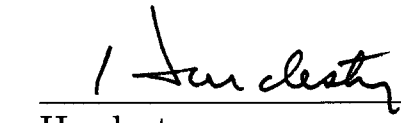
[8]According to the district court minutes from the October 24, 2008, hearing, the issues before the court included requests to enforce the therapeutic aide provision, to allow "Plaintiff" to act as a therapeutic aide until an aide was secured, and to remove the parties' parenting coordinator.

[9]Indeed, as respondent points out, appellant herself characterized the July 18 ruling as temporary in her previous filings in this appeal.

[10]In addition, the written order that resulted from the July 18 hearing was not entered until October 16, 2008, and therefore, it is not clear that the October 10 order sets aside any prior order.

[11]Gumm, 118 Nev. 912, 59 P.3d 1220.

ORDER this appeal DISMISSED.[12]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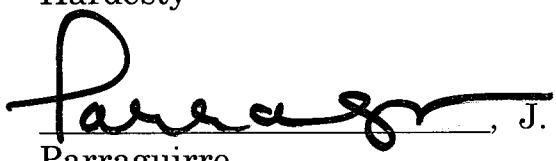
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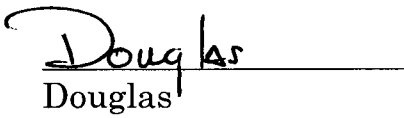
, J.
Douglas

cc: Chief Judge, Eighth Judicial District
Hon. Gerald W. Hardcastle, Senior Judge
Hon. Robert Teuton, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Steinberg Law Group
Louis C. Schneider, LLC
Eighth District Court Clerk

[12]In light of this order, appellant's renewed request for a stay is denied, and respondent's motion to dismiss is denied as moot. Respondent's request for NRAP 38 sanctions is denied.