

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN S. GREEN,
Appellant,
vs.
JOANNE L. GREEN,
Respondent.

No. 52531

FILED

MAR 25 2009

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order that set forth a temporary parenting plan, pending the divorce proceeding, under which respondent was awarded primary physical custody of the parties' minor children and permitted to relocate with the children to Dixon, California. First Judicial District Court, Carson City; James Todd Russell, Judge.

Respondent has filed a motion to dismiss this appeal, arguing that because the custody determination was temporary, pending the divorce proceeding and mediation between the parties, that determination is not appealable. Appellant opposes the motion, asserting that the order is appealable because nothing in the order suggests that allowing respondent to move to California with the children is anything other than permanent. According to appellant, allowing a party to temporarily relocate with the children pending a divorce proceeding is unprecedented and should be treated as a permanent custody order. Alternatively,

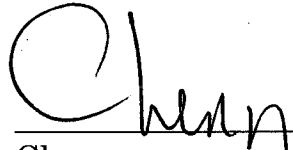
appellant asks this court to treat the appeal as a petition for a writ of mandamus.

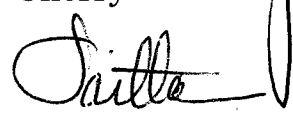
Having reviewed the motion, appellant's opposition, and both parties' supporting documents, we conclude that the order designated in appellant's notice of appeal is not substantively appealable because it does not finally alter or establish custody. NRAP 3A(b)(2). In particular, the order, while granting respondent's motion to relocate, explains that "temporary custody is continued with her," reserving remaining issues until after mediation is completed. Thus, the order is not appealable because it is subject to review and modification by the district court. 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). Once the district court enters a written order finally resolving the custody issues, appellant may appeal if he is aggrieved. NRAP 3A(b)(2) (authorizing an appeal from an order finally establishing or altering custody of minor children); NRAP 4(a) (noting when appeals may be taken). Since the order from which appellant seeks to appeal is temporary, we lack jurisdiction to consider this appeal and, therefore, we dismiss it.

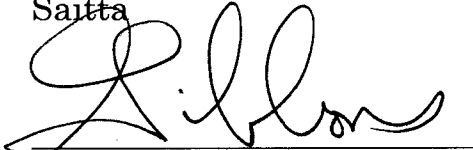
As for appellant's alternative request that we treat this appeal as a petition for mandamus relief, we decline to do so. Procedural requirements for writ petitions are materially different from those for appeals, see NRAP 21(a) (setting forth requirements for a writ petition's contents and service); NRS 34.170 (requiring an affidavit of the party beneficially interested), and appellant has not demonstrated any exigent

circumstances that preclude his counsel from preparing, filing, and serving a proper writ petition, if he so chooses.

It is so ORDERED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Carolyn Worrell, Settlement Judge
Jeffrey Friedman
Peter B. Jaquette
Carson City Clerk