

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE MCGOWAN F/K/A
MICHELLE COOPER,
Appellant,
vs.
BRADLEY COOPER,
Respondent.

No. 53090

FILED

JUL 24 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to modify child custody. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

In January 2006, the parties were divorced in California; the California court awarded respondent primary custody of the parties' five minor children and held that appellant was not required to pay child support or to reimburse respondent for one-half of the children's medical expenses. Thereafter, respondent moved with the children to Las Vegas, Nevada. In October 2008, appellant domesticated the California divorce decree in Nevada and filed a motion to modify custody and to relocate the children to Georgia, where appellant lives. After a hearing on the motion, but without holding an evidentiary hearing, the district court denied appellant's motion based on appellant's failure to prove adequate cause for an evidentiary hearing. This appeal followed.

On appeal, appellant contends that the district court erred in denying appellant's motion to modify custody without holding an evidentiary hearing. In particular, appellant argues that she demonstrated adequate cause for holding a hearing and that a substantial

change in circumstances exists, which affects the children's welfare, so that the district court's denial of her motion to modify was an abuse of discretion.

Matters of custody rest in the district court's sound discretion. Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996). This court will not disturb the district court's custody decision absent a clear abuse of discretion. Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993). The district court may grant a motion to modify a primary physical child custody arrangement if it is established that "(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." Ellis v. Carucci, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007). Further, the district court has discretion to deny a motion to modify custody without conducting a hearing, unless the movant demonstrates adequate cause for holding a hearing. Rooney v. Rooney, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993). To establish a need for an evidentiary hearing, the movant must show "something more than allegations, which, if proven, might permit inferences sufficient to establish grounds for a custody change." Id. at 543, 853 P.2d at 125 (internal citation omitted).

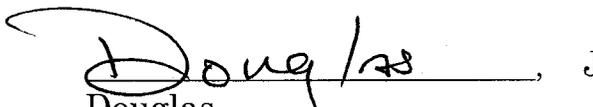
Here, the district court's written order summarily found that appellant failed to demonstrate adequate cause for setting the matter for an evidentiary hearing. The district court also denied appellant's request for modification of custody.

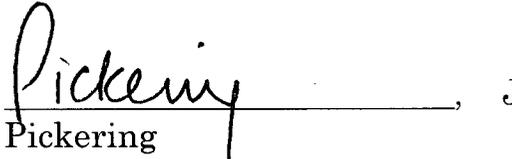
Having reviewed the appellate record and considered the parties' appellate arguments, we conclude that the district court did not abuse its discretion in refusing to hold an evidentiary hearing because the

appellate record reveals that appellant failed to demonstrate adequate cause for holding an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. Stefany Miley, District Judge
Ciciliano & Associates, LLC
David L. Mann
Eighth District Court Clerk

¹NRAP 34(f).