IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN TREBON N/K/A SUSAN SCHENCK,
Appellant,
vs.
MATTHEW S. TREBON,
Respondent.

No. 57453

FILED

OCT 27 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court post-divorce decree order concerning child custody. Eighth Judicial District Court, Family Court Division, Clark County; William B. Gonzalez, Judge.

When our review of the record before us revealed a jurisdictional defect, we directed appellant to show cause why this court has jurisdiction. Specifically, as noted in the district court order and reflected in the appellate record, appellant, through counsel, effectively withdrew her motion to modify custody and relocate with the child when she informed the district court that she would remain in Nevada. As a result, it appeared that appellant was not an aggrieved party. See Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (explaining when a party is aggrieved). In her response to our show cause order, appellant states that she did not withdraw her motion to modify custody and relocate, but she fails to mention the effect of her agreement, made at the same hearing, not to relocate with the child outside of Nevada. Because appellant withdrew her motion to modify custody and relocate, when she informed the district court that she would remain in

Nevada, appellant lacks standing to appeal from the district court's decision to deny her motion. Id. Accordingly, as we lack jurisdiction over this appeal, we order this appeal dismissed.

It is so ORDERED.[1]

Cherry, J.

Gibbons, J.

Pickering, J.

cc: Hon. William B. Gonzalez, District Judge, Family Court Division
Mann Law Firm
Matthew S. Trebon
Eighth District Court Clerk

---

[1]We note that the proper person form, prepared by a legal services organization, that was used by appellant in seeking a custody modification and permission to relocate with the child incorrectly utilizes the analysis and factors set forth in Schwartz v. Schwartz, 107 Nev. 378, 812 P.2d 1268 (1991), to address a motion to modify a joint physical custody arrangement and relocate with a child. Appellant's district court counsel applied this incorrect analysis in addressing these issues. Similarly, in considering appellant's motion, the district court incorrectly believed that a substantial change in circumstances was necessary to warrant modification of a joint physical custody arrangement. Thus, although we lack jurisdiction to address this appeal, we nonetheless take this opportunity to point out that, under our well-established precedent, a relocation request that involves a joint physical custody arrangement must be analyzed under a best-interest-of-the-child standard. See Rivero v. Rivero, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009); see also Potter v. Potter, 121 Nev. 613, 119 P.3d 1246 (2005); Truax v. Truax, 110 Nev. 437, 438-39, 874 P.2d 10, 11 (1994); NRS 125.510(2).