

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUELINE B. CARMAN,
Appellant,
vs.
MICHAEL P. CARMAN,
Respondent.

No. 59362

JACQUELINE B. CARMAN,
Appellant,
vs.
MICHAEL P. CARMAN,
Respondent.

No. 59578

FILED

DEC 24 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated fast track appeals from post-divorce decree orders of the district court directing that a surgical procedure be performed on one of the parties' minor children and granting an award of attorney fees to respondent. Eighth Judicial District Court, Clark County; Cynthia N. Giuliani, Judge.

Docket No. 59362

On August 22, 2011, the district court entered a written order directing that Dr. Kaplan perform a surgical procedure on the parties' minor child. Appellant contends that the district court lacked jurisdiction to order the procedure over the objection of a parent who shares joint legal custody of the child. Appellant also contends that the district court failed to make a finding that the procedure was in the child's best interest.

We conclude that the district court had jurisdiction to order the surgical procedure. See Rivero v. Rivero, 125 Nev. 410, 421, 216 P.3d 213, 221-22 (2009) (providing that when the parties reach an impasse and are unable to agree on a legal custody decision, then the parties may appear before the court to have the court make a decision as to what is in the child's best interest); see also NRS 125.480; NRS 125.510(1)(a). While the district court did not make a finding in the order that the surgical procedure was in the child's best interest, the order was based on the parties' agreement that the procedure be done. In particular, appellant agreed to the procedure on the record at the February 16, 2011, hearing as follows:

MR. HOF LAND: So maybe today we can take care of that first thing is that my client is in agreement that Dr. Kaplan - - that it should be done. I don't - - let's - - let's have the surgery done and you agree, Jackie, you agree, right?

MS. CARMAN: Absolutely. I'm the one when I got the paperwork I asked him, let's schedule it.

MR. HOF LAND: So maybe we can take care of that and I think that you've placed a call into their billing department there in which to - -

MS. CARMAN: I did.

Appellant now contends that she was reluctant to have the procedure performed; but once she realized the court's intention to order the surgery, she merely advised the court that Dr. Kaplan was the preferred surgeon rather than risk the appointment of a less qualified surgeon. Appellant's contention is belied by the transcript, which indicates her clear agreement to the procedure. Moreover, there was a lengthy discussion about the issue between the parties and the court,

appellant was represented by counsel, and appellant failed to object despite adequate opportunity to do so. Again, although the district court made no findings as to the child's best interest, the record reflects that the parties were clearly aware of the risks and benefits of the surgery before they agreed to it. Under these circumstances, we conclude that the district court did not abuse its discretion in ordering Dr. Kaplan to perform the surgical procedure. See Grisham v. Grisham, ___ Nev. ___, ___ P.3d ___ (128 Nev. Adv. Op. 60, December 6, 2012) (recognizing that an agreement placed on the record in open court is enforceable).¹

Docket No. 59578

Appellant challenges the district court's order awarding \$2,500 in attorney fees to respondent's counsel. Having reviewed the record, we conclude that the district court did not abuse its discretion in awarding attorney fees. See NRS 125.150(3) (authorizing the district court to award reasonable attorney fees in a divorce action); Sprenger v. Sprenger, 110 Nev. 855, 859, 878 P.2d 284, 287 (1994) (stating that an award of attorney fees is within the district court's sound discretion); Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727 (2005) (allowing an award of

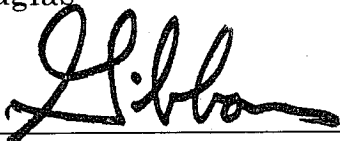
¹Ordinarily, a party who agrees to an order is not an aggrieved party with standing to appeal. See NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994) (stating that a party is aggrieved when a personal or property right is adversely affected by the district court's ruling). Here, however, appellant challenges the district court's jurisdiction to enter the order. See Mainor v. Nault, 120 Nev. 750, 101 P.3d 308 (2004) (recognizing that subject matter jurisdiction may be raised at any time in a proceeding).

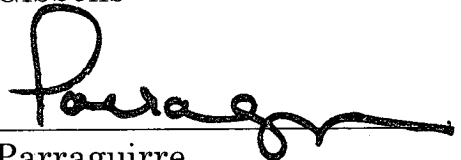
attorney fees to counsel serving in a pro bono capacity); see also Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969).

Accordingly, we affirm the orders of the district court.

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Cynthia N. Giuliani, District Judge
Jacqueline B. Carman
Kunin & Carman
Eighth District Court Clerk