

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE ANGLESE,
Appellant,
vs.
LINDA ANGLESE,
Respondent.

No. 35651

FILED

MAY 13 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a final divorce decree. Appellant has challenged the portion of the decree that awarded respondent custody of the minor children and granted respondent permission to relocate with the children to Illinois. It appeared that after the notice of appeal was filed, but before resolution of the appeal, the district court entered an order in May 2001, changing custody of the children from respondent to appellant. Thus, we ordered appellant to show cause why this appeal should not be dismissed as moot.¹ Appellant has failed to respond to our order to show cause. We elect to treat appellant's silence as a concession that his appeal is now moot.

On May 13, 2002, respondent filed a response to our order to show cause. She urges this court not to dismiss the appeal, as she will

¹See NCAA v. University of Nevada, 97 Nev. 56, 624 P.2d 10 (1981) (noting that this court's duty is to decide actual controversies, not to give opinions on moot questions).

purportedly be left without a remedy. Respondent was not an aggrieved party with standing to appeal from the divorce decree, because the district court awarded her custody of the children and granted her permission to relocate with the children to Illinois.² Moreover, respondent concedes that she failed to timely file an appeal from the May 2001 order.³

As for the May 2001 order that changed the child custody arrangement from respondent to appellant during the pendency of the appeal, that order was entered subsequent to the filing of the appeal, and thus, the order is not properly before this court in the context of this appeal.⁴ Additionally, as no appeal was taken from the order, it is not subject to our review. Nevertheless, it appears that the district court lacked jurisdiction to consider changing child custody while the appeal was pending,⁵ and we strongly disapprove of the district court's decision to

²See NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994).

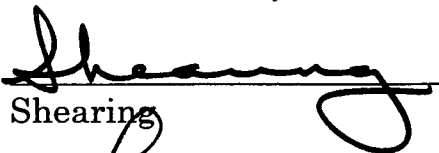
³See NRAP 4(a)(1); NRAP 3A(b)(2).

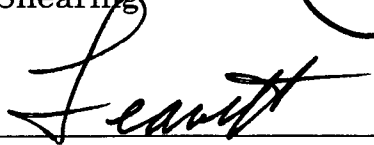
⁴See Russo v. Gardner, 114 Nev. 283, 287, 956 P.2d 98, 100 (1998) (recognizing that this court will not consider matters outside the record on appeal).

⁵See Rust v. Clark Cty. School District, 103 Nev. 686, 747 P.2d 1380 (1987) (recognizing that a timely notice of appeal divests the district court of jurisdiction over the order from which an appeal is taken); see also Bongiovi v. Bongiovi, 94 Nev. 321, 579 P.2d 1246 (1978) (providing that district court retains jurisdiction to enter orders on matters collateral to and independent from the appealed order).

consider appellant's motion while the custody issue was squarely before this court on appeal. Equity demands that respondent have another opportunity to address child custody in the district court. If respondent files a motion to change custody, the district court should address the issues anew.

Since we conclude that this appeal is moot, we
ORDER this appeal DISMISSED.⁶

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Kristina Pickering, Settlement Judge
Stephen R. Minagil
Myers Chambers, LLC
Clark County Clerk

⁶In light of this order, we deny as moot respondent's counsel's April 22, 2003 motion to withdraw.