

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIELLE TYRA,
Appellant,
vs.
JASON PAUL VAN BUREN,
Respondent.

No. 76618-COA

FILED

MAR 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Danielle Tyra appeals from a district court order denying modification of child custody. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Respondent Jason Paul Van Buren has primary physical custody of the parties' minor child, subject to Danielle's parenting time. Danielle made various filings in district court seeking to modify custody. Jason opposed these filings and moved to have Danielle declared a vexatious litigant, among other relief. After a hearing, the district court entered an order denying Danielle's requests per the two prong test set forth in *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007), and denying Jason's requests for relief,¹ except for the request to have Nevada Day removed as a holiday

¹In his fast track response, Jason requests relief, some of which was denied by the district court's order at issue in this appeal; however, he failed to file a cross-appeal and thus, this court cannot consider those issues or

from the parties' parenting plan as California does not recognize the holiday and Jason and the minor child reside in California. This appeal, which challenges only the district court's denial of Danielle's motions to modify custody followed.

The district court has broad discretionary powers to determine child custody matters and its custody determination will not be disturbed absent a clear abuse of discretion. *Id.* at 149, 161 P.3d at 241. To modify primary physical custody, the party seeking modification must prove "(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." *Id.* at 150-51, 161 P.3d at 242-43. Our review of the parties' arguments and the record before us on appeal indicates no abuse of discretion in the district court's determination that Danielle's filings were insufficient to satisfy the *Ellis* requirements, as Danielle has failed to demonstrate that a change in circumstances warranting modification has occurred. *Id.* Notably, while Danielle makes numerous allegations against Jason and other members of his family, those arguments and assertions are not supported by the record on appeal and thus, they do not provide a basis for relief. Under these


provide Jason any relief on appeal. See *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) ("[A] respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal.").

circumstances, we conclude there was no abuse of discretion in the denial of Danielle's motions to modify custody. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Danielle Tyra
Michael A. Root
Eighth District Court Clerk

²To the extent that Danielle attached documents to her fast track statement for our review that were not presented to the district court, we did not consider them as we cannot consider matters that do not properly appear in the record on appeal. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981).