



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KRYSTEN MAXWELL,
Appellant,
vs.
GREGORY SIMPSON, JR.,
Respondent.

No. 92163-COA

*ORDER AFFIRMING IN PART
AND DISMISSING IN PART*

Krysten Maxwell appeals from a district court order denying motions to modify child custody and an order denying reconsideration of that decision. Eighth Judicial District Court, Family Division, Clark County; Hon. Nadin Cutter, Judge.

Maxwell and respondent Gregory Simpson, Jr., who were never married, are the parents of one minor child, N.S., who was born in March 2013. In 2022, the district court entered a custody decree which awarded the parties joint legal custody and provided Simpson with primary physical custody with Maxwell receiving unsupervised parenting time. Prior to entry of the decree, a central dispute was whether Maxwell was abusing methamphetamine. Thus, during the initial custody proceedings, the court ordered Maxwell to participate in the Options patch program to determine whether she was using methamphetamine.

Maxwell repeatedly tested positive for amphetamine and methamphetamine and she ultimately failed to complete the program. However, Maxwell maintained the positive test results were either the result of innocent exposure because her home was “infested with methamphetamines” or were the result of fraud or contaminated samples.

Maxwell asserted that she underwent a different form of drug testing through the American Toxicology Institute and these tests were negative for narcotics. During the initial evidentiary hearing, Simpson offered expert testimony that established the patch program was reliable and Maxwell's results were not caused by innocent exposure. The court credited that testimony in the initial custody decree. The decree also found there was a high level of conflict between the parties and N.S. struggled in school although she was improving under Simpson's care. Ultimately, the court concluded these factors supported awarding Simpson primary physical custody and further required Maxwell to pay child support.¹

In September 2023, Maxwell moved to modify custody asserting there was a high level of conflict between the parties, that N.S. was continuing to struggle academically, and N.S. was misbehaving in school, which resulted in her being removed from the track and cheer teams. Simpson opposed and argued, in part, that Maxwell was continuing to abuse drugs. The district court ordered Maxwell to submit to drug testing outside of the Options program, and she subsequently tested positive for amphetamine and methamphetamine. Maxwell then agreed to participate in the Options patch program but after again testing positive for amphetamine and methamphetamine Maxwell left the program. Accordingly, the court denied the motion and stated it would not consider modifying her parenting time until she produced 12 clean patch tests.²

¹Although Maxwell appealed from the custody decree, her appeal was eventually dismissed pursuant to a stipulation between the parties. *Maxwell v. Simpson*, No. 85813 (Nev. Feb. 22, 2023) (Order Dismissing Appeal).

²Maxwell did not appeal this order.

In February 2025, Maxwell filed a second motion to modify custody, again alleging N.S. was struggling in school, being disrespectful to her teachers, and Maxwell's relationship with N.S. was deteriorating. Maxwell further asserted she was not using illicit narcotics and requested the district court award her joint physical custody and modify child support. Simpson opposed, arguing Maxwell had yet to produce 12 clean patch tests and further disputed Maxwell's allegations, claiming N.S. was doing well in school. Following a motion hearing, the court orally denied the motion based on Maxwell's history of drug use and ordered Maxwell to participate in the Options drug testing patch program.³

In August 2025, Maxwell filed her third motion to modify custody and again argued that her relationship with N.S. continued to deteriorate and there was significant conflict between herself and Simpson. Simpson again opposed, arguing Maxwell had yet to complete the Options program and asserting Maxwell's ongoing drug usage was the cause of her relationship issues with N.S. Maxwell filed a reply asserting the Options patch testing was unreliable and insisting she would not comply with the drug testing based upon her scientific concerns. In November 2025, the district court denied this motion to modify, noting that once Maxwell produced 12 clean patches the court would schedule an evidentiary hearing to consider revising Maxwell's parenting time. Maxwell filed a motion for reconsideration, which again argued the patch program was unreliable. However, Maxwell agreed to participate in the Options program so long as she was permitted to simultaneously undergo hair and urine tests, which

³The district court did not enter a written order expressly denying this motion and instead implicitly denied it through the November 2025 order discussed below.

she asserted were more reliable. The court granted the motion in part, concluding that Maxwell must produce 12 clean patches but she could simultaneously undergo hair and urine tests at her expense. Maxwell now appeals.⁴

On appeal, Maxwell challenges the denial of her February and August 2025 motions to modify custody without holding an evidentiary hearing, asserting the district court abused its discretion by requiring her to submit 12 clean patches before it would consider modifying parenting time. Simpson contends Maxwell failed to properly allege changed circumstances and failed to comply with the Options patch program, which he contends is a precondition of filing another motion to modify custody.

We review a district court's decision to deny a motion to modify physical custody without holding an evidentiary hearing for an abuse of discretion. *See Bautista v. Picone*, 134 Nev. 334, 338, 419 P.3d 157, 160 (2018). A district court abuses its discretion only when "no reasonable judge could reach a similar conclusion under the same circumstances." *In re Guardianship of Rubin*, 137 Nev. 288, 294, 491 P.3d 1, 6 (2021) (internal

⁴Maxwell's notice of appeal identifies the order denying her motion for reconsideration and "all underlying and related orders" as decisions being challenged in this appeal. Further, Maxwell's opening brief presents numerous arguments challenging various orders issued prior to the initial custody decree as well as certain findings included in the initial custody decree. However, Maxwell's appeal of those rulings is untimely and accordingly we dismiss the portion of the appeal challenging those orders. *See Healy v. Volkswagenwerk Aktiengesellschaft*, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987) (holding an untimely notice of appeal fails to invoke this court's jurisdiction to consider the appeal). Accordingly, the only orders properly before this court are the November 2025 order denying the motions to modify and the January 2026 order denying in part the motion for reconsideration.

quotation marks omitted). When a movant seeks to modify physical custody, the district court “only needs to hold an evidentiary hearing if the movant demonstrates ‘adequate cause’ for one,” which “arises if the movant demonstrates a prima facie case for modification.” *Myers v. Haskins*, 138 Nev. 553, 556, 513 P.3d 527, 531 (Ct. App. 2022). In particular, the movant must show there has been a substantial change in circumstances affecting the welfare of the child and modification is in the child’s best interest. *Id.* at 556, 513 P.3d at 532. When considering whether the movant has demonstrated a prima facie case to modify custody, the court must accept the movant’s allegations as true. *Id.* at 556-57, 513 P.3d at 532. However, a court “need not blind [itself] to evidence a nonmovant presents if it ‘conclusively establish[es]’ the movant’s claims are false.” *Id.* at 558-59, 513 P.3d at 533 (alteration in original). And the court need not consider general or vague allegations. *Id.* at 559, 513 P.3d at 534. Furthermore, any change in circumstances “must generally have occurred since the last custody determination” so as to prevent “repetitive, serial motions.” *Ellis v. Carucci*, 123 Nev. 145, 151, 161 P.3d 239, 243 (2007).

Here, we conclude the district court did not abuse its discretion because Maxwell failed to demonstrate changed circumstances warranting an evidentiary hearing. Notably, the high level of conflict and N.S.’s poor academic performance were litigated during the initial custody proceedings and thus do not constitute changed circumstances. Further, to the extent Maxwell asserted Simpson was the cause of her poor relationship with N.S., we conclude these allegations were too vague to warrant modification. Finally, although Maxwell asserts she is not using illicit narcotics, she admittedly failed to submit to the court ordered drug tests or tested positive for amphetamine and methamphetamine when she did submit to the tests.

And the court was not required to “blind [itself]” to the evidence of Maxwell’s prior drug usage and its findings related thereto. *Myers*, 138 Nev. at 558-59, 513 P.3d at 533. Accordingly, we conclude the district court properly denied Maxwell’s motions to modify custody because they were “repetitive, serial motions” that failed to sufficiently allege changed circumstances.⁵

Maxwell further asserts the district court abused its discretion by failing to hold an evidentiary hearing to determine whether the patch results were reliable and the court erred by failing to consider whether her positive drug tests were the result of Options engaging in fraud. Simpson contends Maxwell’s challenge is untimely as the court considered the reliability of the drug tests during the initial evidentiary hearing.

Here, the record confirms the district court addressed Maxwell’s concerns regarding the reliability of the patch results during the initial evidentiary hearing. Specifically, during the initial evidentiary hearing the court heard expert testimony regarding the patch results,

⁵We note that Simpson contends Maxwell cannot move to modify custody until she produces 12 clean patch tests and he has routinely opposed her motions to modify on those grounds. However, if Maxwell were to sufficiently allege changed circumstances and that modification of custody was in L.H.’s best interests in a subsequent motion, the court has an obligation to consider the allegations. *See Myers*, 138 Nev. at 556, 513 P.3d at 531-32 (explaining that a court is required to hold an evidentiary hearing only if the movant demonstrates both changed circumstances and that modification is in the child’s best interest); *Millen v. Eighth Jud. Dist. Ct.*, 122 Nev. 1245, 1253, 148 P.3d 694, 699 (2006) (providing that a district court judge “has a duty to sit and preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard, or other compelling reason to the contrary” (internal quotation marks omitted)); NRS 125C.0045(1) (stating that, at any time, the district court may enter orders for the “custody, care, education, maintenance and support of the minor child as appears in his or her best interest” and modify or vacate such orders if it is in the best interest of the child).

whether the results were sufficiently reliable, and whether Maxwell's positive results were the result of environmental exposure rather than drug usage. Maxwell, who was represented by counsel during the hearing, had the opportunity to present relevant evidence in support of her position. And, the court ultimately concluded the results were sufficiently reliable. Although Maxwell initially appealed the determination, she ultimately elected not to pursue her appeal and she cannot now relitigate the issue of reliability. *See Hsu v. County of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) (holding the law of the case doctrine precludes a litigant from relitigating a prior issue in a subsequent appeal).⁶

Finally, Maxwell contends the district court abused its discretion by failing to modify child support. Simpson disagrees, arguing that there is a separate child support matter pending before a different district court and so the matter is not properly before us.

We review orders regarding child support for an abuse of discretion. *Backman v. Gelbman*, 141 Nev., Adv. Op. 8, 565 P.3d 330, 333 (Ct. App. 2025). “[T]he district court only has authority to modify a child support order upon finding that there has been a change in circumstances since the entry of the [prior support] order and the modification is in the best interest of the child.” *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213,

⁶We additionally reject Maxwell's contention that the court created “an arbitrary Catch-22” by requiring her to rely on the Options patch program instead of utilizing a different test protocol. We note on multiple occasions Maxwell agreed to participate in Options but then failed to do so. And the court's conclusion that it would not be appropriate to switch to a less sensitive testing protocol for determining whether Maxwell was abusing drugs is supported by the record given Maxwell's drug usage has been a concern since the outset of this litigation.

228 (2009), *overruled in part on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022).

Here, we note that although Simpson contends there are separate child support proceedings, we nevertheless have jurisdiction to consider the denial of Maxwell's motion to modify child support as the motion was filed in the underlying case and the district court retains jurisdiction over custody and support proceedings. *See, e.g., Fernandez v. Fernandez*, 126 Nev. 28, 35, 222 P.3d 1031, 1035 (2010) (holding "[t]he trial court has continuing jurisdiction over its child support orders"). We conclude that the court did not abuse its discretion in denying Maxwell's request to modify child support as she did not sufficiently allege changed circumstances warranting modification. Therefore, the court did not abuse its discretion in denying Maxwell's request to modify support.⁷

Accordingly, we

ORDER the judgment of the district court AFFIRMED in part and the appeal DISMISSED in part.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

⁷Insofar as Maxwell raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Nadin Cutter, District Judge, Family Division
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