IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY MICHAELS,
Appellant,
vs.
HOLLY MICHAELS,
Respondent.

No. 38868

FILED

NOV 12 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to change child custody.[1]

---

[1]In his notice of appeal, appellant designates four orders that he is appealing from: the January 24, 2001 order concerning mediation; a January 30, 2001 order; a July 13, 2001 order; and the September 17, 2001 order denying his motion for reconsideration. The record before this court does not contain a January 30, 2001 order, and the district court docket entries do not list a January 30 order. The July 13, 2001 order was listed in the district court docket entries, but was not part of the record before this court. On August 13, 2002, this court received a letter from the district court clerk indicating that the July 13, 2001 docket entry was a data entry error. Thus, the only orders before this court are the January 24, 2001 order and the September 17, 2001 order.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). No statute or rule authorizes an appeal from an order requiring the parties to mediate. Thus, the January 24, 2001 order regarding mediation is not substantively appealable. Moreover, the September 17, 2001 order denying appellant's motion for reconsideration is not an appealable order. See Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (stating that an order denying reconsideration is not appealable). Nevertheless, we

continued on next page . . .

Matters of custody, including visitation, rest in the sound discretion of the district court,[2] and this court will not disturb the district court's judgment absent a clear abuse of discretion.[3] A two-prong test has been applied in addressing modifications to child custody arrangements.[4] A change of primary physical custody is warranted only when: (1) the parent's circumstances have been materially altered; and (2) the child's welfare would be substantially enhanced by the change.[5]

Here, the district court found that it was in the children's best interest for the custody arrangement to remain unchanged. Moreover, the court concluded that no relevant grounds existed for a change of custody. Finally, the district court denied appellant's motion for a compensatory week of visitation. We conclude that the district court did not abuse its

---

. . . *continued*
construe appellant's notice of appeal as from the July 30, 2001 order denying appellant's motion to modify the child custody arrangement. See Burton v. Burton, 99 Nev. 698, 700, 669 P.2d 703, 705 (1983); Ross v. Giacomo, 97 Nev. 550, 635 P.2d 298 (1981); Forman v. Eagle Thrifty Drugs & Markets, 89 Nev. 533, 516 P.2d 1234 (1973).

[2]Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

[3]See Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993); see also NRS 125. 480(1) (providing that the sole consideration in awarding custody of a child is the best interest of the child).

[4]Murphy v. Murphy, 84 Nev. 710, 447 P.2d 664 (1968).

[5]Id.

discretion when it denied appellant's motion to modify the child custody arrangement. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]

_____, C.J.
Maupin

_____, J.
Rose

_____, J.
Agosti

cc: Hon. William O. Voy, District Judge, Family Court Division
Lyons & Ellsworth
Barry Michaels
Clark County Clerk

---

[6]Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him.