

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIVIAN D. LEMAN,
Appellant,
vs.
BRENN A. JACOBS,
Respondent.

No. 39723

FILED

AUG 21 2002

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order granting respondent's motion, under NRCP 60(b), to set aside an order concerning grandparent visitation and denying appellant's motion for grandparent visitation.¹

The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion.² The district court's decision must be supported by competent evidence.³ Here, the district court found that respondent did not have proper notice of appellant's motion for visitation with the child. Specifically, appellant sent notice of the motion to respondent's former address. Respondent first learned of the matter when he received a copy, on or about February 8, 2002, of the January 25, 2002 order that granted appellant visitation with the child. Thereafter, respondent retained counsel and filed the NRCP

¹In the notice of appeal, appellant designates the April 4, 2002 order, concerning visitation, and the May 20, 2002 order, denying her motion for reconsideration of the April order, as the orders she is appealing from. An order denying reconsideration is not an appealable order. See Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983). Thus, this court lacks jurisdiction to consider the May 20 order.

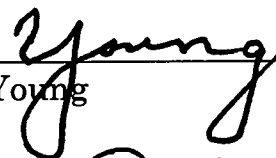
²See Cook v. Cook, 112 Nev. 179, 912 P.2d 264 (1996).


³Id.

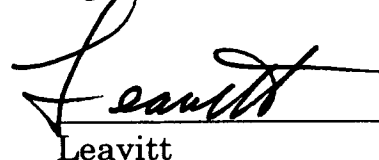
60(b) motion. Thus, we conclude that the district court did not abuse its discretion when it set aside the order that granted appellant visitation with the child.

As for appellant's motion for visitation, under NRS 125C.050(4), if a parent of the child has denied a party visits with the child, there is a rebuttable presumption that the granting of a right to visitation to the party seeking visitation is not in the child's best interest. "To rebut this presumption, the party seeking visitation must prove by clear and convincing evidence that it is in the best interests of the child to grant visitation."⁴ To overcome the presumption, appellant contended that she loved the child and provided support for the child when the child resided with her, and appellant contested respondent's attempts to restrict all contact between her and the child. The district court concluded that the evidence offered by appellant was not sufficiently clear and convincing to warrant granting visitation. We conclude that the district court did not abuse its discretion when it denied appellant's motion for visitation. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

⁴NRS 125C.050(4).

cc: Hon. Deborah Schumacher, District Judge
Judy P. Osgood
Vivian D. Leman
Washoe District Court Clerk