

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 40493

PATRICIA J. KENLEIN, F/K/A  
PATRICIA J. PADDACK,  
Appellant,  
vs.  
BILLY W. PADDACK,  
Respondent.

FILED

FEB 20 2003

ORDER DISMISSING APPEAL

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

This is an appeal from a district court order temporarily changing the child custody arrangement.

The parties were divorced in 1996. They have two minor children from the marriage. Appellant was awarded primary physical custody. In 2001, the district court granted appellant permission to relocate with the children to California. In August 2002, respondent moved the district court to change the child custody arrangement. Respondent sought a change in custody on the basis that the children were on the verge of failing school in California. Respondent urged the district court to allow him the opportunity to help the children improve their academic performance. Appellant opposed the motion. A hearing was conducted on respondent's motion.

On October 28, 2002, the district court awarded respondent "temporary primary physical custody" of the children. The district court acknowledged that the children were "treading perilously close to failing"

in school. The court ordered a follow-up hearing, scheduled for April 8, 2003, to determine whether the children's temporary placement with respondent has resulted in an improvement in the children's academic performance. Appellant filed a notice of appeal from the October 28, 2002 order.<sup>1</sup>

Respondent moves this court to dismiss this appeal for lack of jurisdiction.<sup>2</sup> Specifically, respondent contends that the October 28, 2002 order is not a final judgment, and thus, is not substantively appealable. Appellant opposes respondent's motion to dismiss. This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule.<sup>3</sup> We conclude that the October 28, 2002 order changing child custody is a temporary order, and is not appealable because

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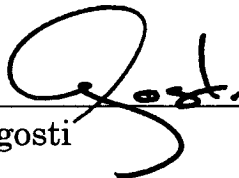
<sup>1</sup>Appellant seeks a stay of the district court's October 2002 order pending appeal. In light of this order, we deny as moot appellant's November 15, 2002 motion for stay.

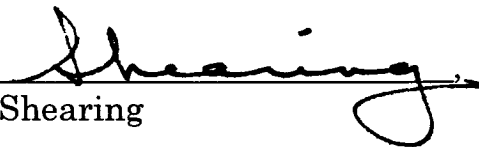
<sup>2</sup>Respondent contends that appellant knew that the October 2002 order was not substantively appealable. Thus, respondent requests attorney fees as sanctions against appellant for filing the appeal and the motion for stay. We deny respondent's request for sanctions. While NRAP 3A(b)(1) provides that an appeal may be taken from a final judgment, it does not require that appellant guarantee substantive appealability.

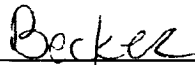
<sup>3</sup>See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

it is subject to review and modification by the district court.<sup>4</sup> Accordingly, as we lack jurisdiction over this appeal, we grant respondent's motion, and we

ORDER this appeal DISMISSED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Agosti

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Steven E. Jones, District Judge, Family Court Division  
Frances-Ann Fine  
Rhonda L. Mushkin, Chtd.  
Clark County Clerk

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<sup>4</sup>See In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 901 (1989) (holding that no appeal may be taken from a temporary order subject to periodic mandatory review); Sugarman Co. v. Morse Bros., 50 Nev. 191, 255 P. 1010 (1927) (indicating that no appeal may be taken from a temporary restraining order); see also NRAP 3A (b)(2).

<sup>5</sup>We vacate the notice of settlement conference issued on November 27, 2002.