

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY MICHAELS,
Appellant,

vs.

HOLLY MICHAELS, N/K/A HOLLY
BRAND,
Respondent.

No. 41433

BARRY MICHAELS,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JENNIFER ELLIOTT, DISTRICT
JUDGE, FAMILY COURT DIVISION,
Respondents,

and

HOLLY MICHAELS, N/K/A HOLLY
BRAND,
Real Party in Interest.

No. 42054

FILED

APR 08 2004

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

ORDER OF AFFIRMANCE (NO. 41433)
AND DENYING PETITION FOR
WRIT OF MANDAMUS (NO. 42054)

Docket No. 41433 is a proper person appeal from a post-decree district court order denying appellant's motion to modify the child custody arrangement. Docket No. 42054 is an original proper person petition for a writ of mandamus challenging a district court order concerning contempt.

The district court enjoys broad discretionary powers in determining child custody issues, and this court will not disturb the

district court's judgment absent a clear abuse of discretion.¹ "A change of custody is warranted only when: (1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change."² The moving party in a custody proceeding must show that circumstances have substantially changed since the most recent custodial order.³ Having reviewed the documents before us, we conclude that the district court did not abuse its discretion when it denied appellant's motion to modify the child custody arrangement.

We further conclude that the portion of the district court's order directing appellant to pay \$150 per month on the \$3,266.85 total attorney fees award is not substantively appealable because the district court merely structured a payment schedule in enforcing a prior order awarding fees and interest. It appears that appellant did not appeal from the prior order. Additionally, an order that simply enforces a prior order does not affect the rights of a party growing out of the final judgment, and is therefore not appealable as a special order after final judgment.⁴ Accordingly, we decline to consider that issue on appeal.

Finally, with respect to the petition for a writ of mandamus, we have considered the petition, and we are not satisfied that our

¹See Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993).


²Murphy v. Murphy, 84 Nev. 710, 711, 447 P.2d 664, 665 (1968).


³See McMonigle v. McMonigle, 110 Nev. 1407, 1408, 887 P.2d 742, 743 (1994).


⁴See Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002).

intervention by way of extraordinary relief is warranted at this time. Accordingly, we deny the petition.⁵

It is so ORDERED.⁶


_____, C.J.
Shearing


_____, J.
Rose


_____, J.
Maupin

⁵See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁶Although appellant and respondent were not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from them. Appellant has submitted a motion for leave from this court to proceed in forma pauperis, but his motion does not comply with NRAP 24(a). In particular, an appellant must first file a motion in the district court for permission to proceed in forma pauperis. Appellant's failure to pay the supreme court filing fee or to comply with NRAP 24(a) could constitute a basis on which to dismiss this appeal. Also, appellant/petitioner submitted a motion for leave to proceed in forma pauperis in the writ proceeding. We conclude that appellant/petitioner has demonstrated that good cause exists to waive the filing fee in that matter and therefore waive the filing fee requirement. See NRAP 21(e). In light of this order, we deny as moot appellant's May 21, 2003 motion for stay, and we deny all other relief requested.

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Barry Michaels
Holly Brand
Clark County Clerk