

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARIAN BRAUN,
Appellant,
vs.
LORI BRAUN,
Respondent.

No. 41749

FILED

JUL 27 2004

ORDER DISMISSING APPEAL

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

This is an appeal from a post-decree order holding appellant in contempt and imposing a jail sentence, reducing child support arrearages to judgment, and awarding attorney fees and costs to respondent. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Judge.

This appeal was docketed in this court in July 2003. The parties participated in a settlement conference but were unable to reach a settlement. In the settlement conference status report, the settlement judge made a determination that appellant failed to participate in good faith in the settlement conference process. See NRAP 16(g). The settlement judge noted that during the first settlement conference, appellant "agreed to complete two tasks within sixty (60) days of the first conference," and the parties agreed that if those two tasks were completed, this appeal would be settled. The settlement judge further noted that "appellant has not been in contact with his counsel . . . and it is believed he did not complete the two tasks as promised" and that appellant "was aware of the second conference, yet did not participate in any fashion." Based on these circumstances, the settlement judge recommended that this court impose sanctions against appellant.

On February 13, 2004, this court ordered appellant to "show cause why sanctions, including dismissal of this appeal, should not be

imposed.” Appellant’s counsel requested an extension of time to respond to the order to show cause on March 8, 2004. Attorney Todd L. Bice with the law firm of Schreck Brignone explained that he needed an extension because he “does not have direct contact with his client” and instead “must go through third parties as [appellant] is presently not in the United States.” We granted the motion for an extension of time.

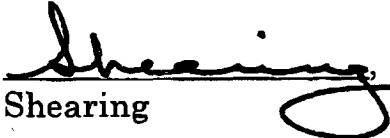
On March 24, 2004, Mr. Bice filed a response to the order to show cause and a motion to withdraw as counsel. Mr. Bice indicated that appellant apparently was unable to complete the tasks related to the settlement proceedings for financial reasons but Mr. Bice could not “fully explain” the circumstances surrounding appellant’s finances because “there is no direct communication with [appellant].” As cause for his withdrawal as counsel, Mr. Bice represented that he “does not have the ability to communicate directly with Appellant, and Appellant is not cooperating with the prosecution of this appeal.” Mr. Bice explained that he had attempted to reach appellant through “third parties” but those attempts had been unsuccessful. Further, Mr. Bice represented that appellant had not paid any legal fees that had accrued to that date. Mr. Bice indicated that appellant’s last known address was that of his mother’s residence in Elmhurst, New York.

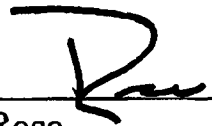
This court granted the motion to withdraw as counsel on April 30, 2004. We gave appellant 30 days from the date of the order to retain new counsel to represent him in this appeal or to inform this court that he did not intend to retain new counsel and submit a response to this court’s February 13, 2004, order. We cautioned appellant that failure to comply with the order “may result in the dismissal of this appeal.”

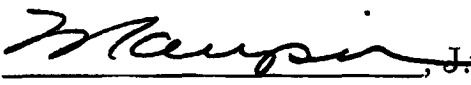
We attempted to serve a copy of our April 30, 2004, order on appellant at his last known address, as provided to us by appellant's counsel. But on May 7, 2004, this court received a letter from Paula Braun, returning several unopened documents that this court had attempted to serve on appellant at the Elmhurst, New York address. Ms. Braun indicates that she had agreed to hold mail for appellant, "who does not reside here & hasn't lived here in over 20 years." She further informs this court that she does not have a forwarding address for appellant and has "no idea if or when [she could] give such letter[] to him." Subsequently, the April 30, 2004, order was returned to this court as undeliverable, with the notation that appellant did not live at the address and had left no forwarding address.

It appears that appellant has moved and this court is unable to communicate with him. To date, appellant has not notified this court of any address change or otherwise corresponded with this court, nor has new counsel entered an appearance on behalf of appellant. Appellant also has not shown cause why sanctions, including dismissal of this appeal, should not be imposed for his failure to participate in good faith in the settlement conference process. Because it appears that appellant no longer wishes to proceed with this appeal and because appellant failed to participate in good faith in the settlement conference process, we

ORDER this appeal DISMISSED.


Shearing, C.J.


Rose, J.


Maupin, J.

cc: Hon. T. Arthur Ritchie, District Judge, Family Court Division
Susan Holland Johnson, Settlement Judge
Darian Braun
Jolley Urga Wirth & Woodbury
Clark County Clerk