

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALICIA ANN YOUNG, N/K/A ALICIA
ANN HAGERMAN,
Appellant,
vs.
RICHARD YOUNG,
Respondent.

No. 85802 ✓

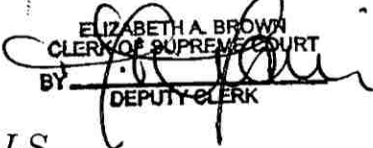
ALICIA ANN YOUNG, N/K/A ALICIA
ANN HAGERMAN,
Appellant,
vs.
RICHARD YOUNG,
Respondent.

No. 87269

FILED

DEC 22 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

ORDER DISMISSING APPEALS

These are appeals from two post-divorce-decree district court orders concerning custody of the parties' minor child and related issues. Eighth Judicial District Court, Family Division, Clark County; Shell Mercer, Judge.

Facts and procedural history

Docket No. 85802 is an appeal from a November 14, 2022, order after status hearing. The November 14 order denied an oral motion for stay of a September 2022 temporary custody order, under which respondent had exclusive custody of the child for reunification purposes; approved the parties' stipulation for a forensic custody examination; set an evidentiary hearing on physical custody modification; and set a future status check hearing. Docket No. 87269 is an appeal from an August 20, 2023, district court order overruling as untimely, as to the issues raised, an objection to the parenting coordinator's 2nd report and recommendations, denying a

motion to modify the parenting coordinator's 2nd report and recommendations, and vacating the evidentiary hearing previously set.

As background, on April 3, 2023, this court granted appellant's unopposed motion for stay of the November 14 order in Docket No. 85802. On June 1, we entered an order of limited remand in that docket pursuant to the district court's certification of its intent to hear pending matters, including respondent's motion to modify custody and appellant's objections to the parenting coordinator's 4th and 5th reports and recommendations.

Meanwhile, the appeal in Docket No. 87269 was filed, and respondent moved to confirm that the limited remand remained effective despite the new appeal. On September 27, we granted the motion, confirming that the filing of the appeal in Docket No. 87269 did not affect the district court's ability to proceed on limited remand. In that order, we also noted that the documents before this court revealed potential issues regarding justiciability, as respondent's exclusive custody period had ended and the parties appeared to have returned to the timeshare and custody arrangement previously agreed to, rendering the issues raised on appeal moot. We directed the parties to show cause why the appeals should not be dismissed.

The district court entered an order on limited remand on December 1, but inexplicably, the order did not finally resolve the motion to modify custody and the objections pending below. Instead, the court certified its intent to rule as proposed therein, should this court remand for that purpose pursuant to NRCP 62.1. Respondent has filed an emergency motion to confirm that the district court's December 1 order is final and effective despite its reference to NRCP 62.1, explaining that its enforceability was being questioned due to the "inclination and remand"

language therein and because no remittitur has issued.¹ Appellant has filed an opposition to the emergency motion and countermotion for stay, and respondent has filed a reply and opposition. Additionally, the parties have filed responses to our show cause order.²

Discussion

In her response to our order to show cause concerning the appeals in Docket Nos. 85802 and 87269, appellant appears to concede that the appeals are technically moot because the exclusive custody period has ended, but she argues that we should not dismiss the appeal in Docket No. 85802 because it raises important constitutional issues requiring this court's review. Respondent agrees that the appeals are moot. See *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (stating that mootness is a question of justiciability and requires that this court render judgments only on actual controversies and recognizing that an appeal is moot when an appellate court is unable to grant effective relief). We conclude that the appeals are moot because, at this time, we can grant no effective relief as to the court's temporary custody changes. Although appellant points to issues concerning the parenting coordinator's alleged overreach and the court's alleged abdication of responsibility, appellant cites no authority allowing her to pursue an otherwise moot appeal under these circumstances, and we are aware of none.

¹Although respondent sought relief by December 12, 2023, he provided no basis for seeking relief by that particular date.

²Appellant filed a response in Docket No. 87269, in which she expressly "recognizes this Court's mootness analysis related to the first appeal," but she did not file a separate response in the first appeal, Docket No. 85802. We note that appellant has also filed a notice of appeal from the December 1 order, Docket No. 87770.

Moreover, the November 14 and August 20 orders appealed from are not substantively appealable, as they address merely temporary changes and measures concerning custody of the child. *In re Temp. Custody of Five Minor Children*, 105 Nev. 441, 443, 777 P.2d 901, 902 (1989) (recognizing that an order determining temporary custody of a minor is not appealable); *see also Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (recognizing that an order is independently appealable as a special order after final judgment only if it substantially affects the rights and obligations of the parties arising from the judgment); *Brunzell Const. Co., of Nev. v. Harrah's Club*, 81 Nev. 414, 419, 404 P.2d 902, 905 (1965) (recognizing that an order granting or denying a stay is not appealable); *cf. NRAP 3A(b)(7)* (listing as appealable an order that finally establishes or alters child custody). Accordingly, the appeals in Docket Nos. 85802 and 87269 are moot, and we lack jurisdiction over them. We order those appeals dismissed.

With respect to respondent's emergency motion to confirm the December 1 order's effectiveness, it is denied. When we entered a limited remand for the district court to hold an evidentiary hearing on the pending motion to modify custody and objections, we returned jurisdiction to the court on a limited basis so that it could resolve those issues. NRAP 12A; *see also Mack-Manley v. Manley*, 122 Nev. 849, 856, 138 P.3d 525, 530 (2006). However, the court's December 1 order clearly did not do so, instead issuing only proposed resolutions, and thus, a new order is required to finally resolve the pending motion to modify custody and objections.

Given the dismissal of these appeals, no additional remand is necessary. And as jurisdiction never properly attached in this court, we direct the clerk of this court to issue the remittiturs forthwith, NRAP

41(a)(1); upon their receipt, the district court may enter an order finally resolving the motion to modify custody and the objections to the parenting coordinator's reports and recommendations. Any order that finally modifies child custody is appealable by an aggrieved party under NRAP 3A(b)(7).

It is so ORDERED.³


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Michele Mercer, District Judge, Family Division
Jones & LoBello
McFarling Law Group
Eighth District Court Clerk

³In light of this order, our April 3 stay is dissolved and appellant's countermotion for stay is denied, as is any other relief requested in the parties' papers.