

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS FITZPATRICK,
Appellant,
vs.
MARINETTE FITZPATRICK,
Respondent.

No. 49065

FILED

OCT 01 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court divorce decree and an order establishing a child custody arrangement. Eighth Judicial District Court, Family Court Division, Clark County; Stefany Miley, Judge.

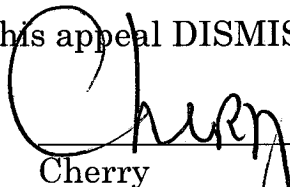
When our review of the docketing statement and the documents filed in accordance with NRAP 3E's fast track rules revealed a potential jurisdictional defect, we directed appellant Thomas Fitzpatrick to show cause why this appeal should not be dismissed. Specifically, we noted that Thomas does not appear to be aggrieved by the orders from which he seeks to appeal. Thomas has timely responded to our order to show cause. Respondent Marinette Fitzpatrick has filed a reply, as permitted.


In our show cause order, we noted that although, in Thomas's docketing and fast track statements, he challenges the district court's joint physical child custody determination, that custody arrangement comports with what Thomas requested in his complaint for divorce. We pointed out, moreover, that according to the hearing transcript, Thomas conceded that he agreed with the court's custody determination.

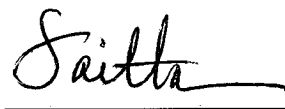
In response to our show cause order, Thomas fails to address that the district court's custody arrangement comported with his expressed wishes regarding child custody and instead argues that he is aggrieved because the district court abridged his constitutional due

process rights by rendering a final custody determination without first holding the scheduled evidentiary hearing, which the court ultimately cancelled. A party is “aggrieved” within the meaning of NRAP 3A(a), and therefore entitled to appeal, “when either a personal right or right of property is adversely and substantially affected’ by a district court’s ruling.”¹ Here, Thomas essentially prevailed in the district court, as the court entered the custody arrangement that Thomas sought and to which he agreed. Thus, even in the absence of an evidentiary hearing, Thomas has not pointed to any personal or property right adversely affected by the district court’s order; he obtained the relief that he requested and was not harmed by the court’s decision to cancel the evidentiary hearing.² Accordingly, Thomas is not aggrieved within the meaning of NRAP 3A(a), and we

ORDER this appeal DISMISSED.³


Cherry, J.


Maupin, J.
Maupin


Saitta, J.
Saitta

¹Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994); Estate of Hughes v. First Nat’l Bank, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980).

²See Riehm v. Commissioner of Public Safety, 745 N.W.2d 869, 877 (Minn. Ct. App. 2008) (recognizing that an appellant cannot assert a procedural due process claim without demonstrating that he has been harmed by the purported denial of his constitutional rights).

³We deny Thomas’s motion requesting that we strike certain documents filed by Marinette and that we sanction her.

cc: Hon. Stefany Miley, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Thomas J. Fitzpatrick
Mark A. Jenkin
Marinette Fitzpatrick
Eighth District Court Clerk