

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAWN MAY,  
Appellant,  
vs.  
VICTOR MAY,  
Respondent.

No. 52885

**FILED**

**AUG 25 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Gloria S. Sanchez, Judge.

On October 15, 2008, respondent filed a complaint for divorce against appellant. According to the district court record, appellant was served with a copy of the divorce complaint, and other documents, on October 20, 2008. Appellant failed to answer respondent's divorce complaint. Consequently, on November 10, 2008, the district court entered a default against appellant for failing to timely respond to the complaint, and a default divorce decree was entered on November 20, 2008. This appeal followed.

On appeal, appellant contends that she was not served with the summons and complaint until October 21, and she responded to the complaint within 20 days by mailing documents to the Clark County Clerk of Court, faxing a copy to the same place, and mailing a copy to respondent at his residence. Appellant also asserts that because she had responded within the 20 days required by law, she was prepared to attend the hearing set for February 5, 2009, which was vacated after the default divorce decree was entered against her. Finally, appellant contends that

the district court improperly awarded primary physical custody to respondent because he has a criminal past and has been abusive toward appellant and the parties' three children.

Under NRCP 12(a)(1), a defendant is required to serve an answer to a complaint within 20 days after being served with a summons and complaint. Service of the answer on the plaintiff is complete upon mailing, but the answer must also be filed. NRCP 5(b)(2)(B). When a party fails to timely respond to a complaint, the clerk shall enter a party's default. NRCP 55(a). Thereafter, the court may enter a default judgment upon application by a party entitled to a default judgment. NRCP 55(b)(2). When a party does not make an appearance after a default is entered, the party applying for a default judgment is not required to serve the defaulted party with notice of the hearing on the application for the default judgment. See id.

Having considered appellant's proper person appeal statement and supplement thereto,<sup>1</sup> we conclude that a default and default judgment was properly entered against appellant. In particular, on appeal,

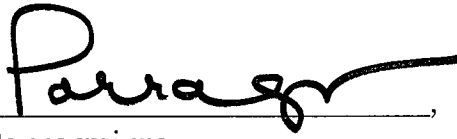
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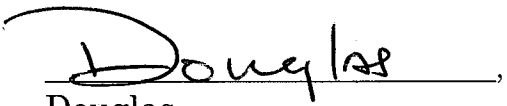
<sup>1</sup>On June 30, 2009, appellant submitted a letter to this court with additional arguments and documentation to support her appellate arguments. We construe appellant's letter as a motion for leave to supplement her proper person appeal statement and hereby grant appellant's motion. Accordingly, we direct the clerk of this court to file appellant's supplement that was provisionally received on June 30, 2009.

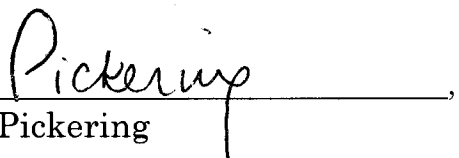
We remind appellant, however, that on appeal this court only examines the district court record and we may not consider matters outside of the district court's record. Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981). Accordingly, the documents attached to appellant's supplement have not been considered in our resolution of the appeal, unless they also appear in the record.

appellant baldly asserts that she responded to the divorce complaint, but the district court record demonstrates otherwise and appellant did not submit any documentation to this court, such as a file-stamped copy of her alleged answer, a fax confirmation sheet, or a return mail receipt, that would indicate that she timely responded to the complaint. Further, notice of the November 20 hearing date was not required to be given to appellant because she had not made an appearance in the underlying action. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Gloria S. Sanchez, District Judge, Family Court Division  
Dawn May  
Victor May  
Eighth District Court Clerk

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<sup>2</sup>To the extent that appellant claims that respondent should not have custody of the parties' minor children due to his alleged past criminal history and alleged abuse of appellant and the children, we note that at this point in the proceedings, those issues are more properly raised in the district court. See NRS 125.510(1)(b).